Supreme Court, U.S.
FILED
99 383 JUL 0 6 1999
OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

BLANCHE HUTCHERSON,

Petitioner,

vs.

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES,

Respondent,

Petition For Writ Of Certiorari To The United States Court of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

BLANCHE HUTCHERSON, PRO SE
341 West 24th Street Apt. 4H
New York, New York 10011-1528
(212) 691-4210

4819

QUESTIONS PRESENTED

Petitioner was born 5/29/36, and was employed from 4/16/62 to 12/31/92 by The New York City, New York City Department of Human Resources. In 1989 and 1992 was brought up on disciplinary charges on false allegations by respondent. Petitioner's Constitutional Rights To Due Process Were Violated.

Whether Petitioner's Constitutional rights to due process to a fair trial were violated when the lower court's decision that a jury would not find proof of age discrimination?

Whether Petitioner's constitutional rights to due process were violated by the Second Circuit's affirmance of the district court's decision, and to deny a rehearing?

Whether Age Discrimination existed when Petitioner was forced out of her job at the time the city was giving an Early Retirement Package to city employees in 1992 by top adminstrators?

Whether age discrimination existed when the Respondent acted simultaneous with petitioner's subordinates when they stated "Why don't you retire" "We have to get rid of Ms. Hutcherson" "When are you going to retire"?

Whether the younger employee age 31 who replaced Petitioner is proof of age discrimination?

Whether Petitioner's constitutional Rights To Due Process were violated when the lower court denied promotion to be part of the complaint in this case?

Whether Petitioner's constituted rights to due process were violated when the city failed to produce two of the seventeen memorandoms to her in district courts?

Whether Petitioner's constitutional rights to due process were violated when the respondent failed to discuss seventeen memorandums in her personnel folder with her?

Whether Petitioner's constitutional rights to due process were violated when the city failed to discuss seventeen memorandums with her and finding her guilty of all charges?

Whether Petitioner's constitutional rights to due process were violated when respondent altered several depositions?

Whether Petitioner's constitutional rights to untainted memorandums were violated by the presentation of false and misleading statements by respondent?

Whether Disparate Treatment includes showing less favor to an employee ages 52 and 561/2 respectively by disciplining her without good cause prove age discrimination?

Whether respondent discriminated, and retaliated against petitioner because she filed complaints with EEOC in December, 1987 and April, 1989?

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents ..... iii and iv

Table of Citations v

Opinions Below 1

Statement of Jurisdiction 1

Constitutional Provision and Statute Involved 1

Statement of the Case 2

Reason for Granting the Writ 2

I. Petitioner's Constitutional Rights Were Violated By The District Court's Failure To Allow A Trial By Jury To Hear The False Allegations Presented By The Respondent 2

II. Petitioner's Constitutional Rights To Due Process Were Violated By The Second Circuit's Affirmance Of The District Court's Decision To Deny Her A Rehearing 2

III. Petitioner's Constitutional Rights To Due Process Were Violated When Several Depositions Were Altered By The Respondent 10

CONTENTS

Page

IV. Petitioner's Constitutional Rights To Due Process Were Violated By Presentation Of Documents In The District Court By The Respondent With False And Misleading Statements 5,6,11,12,13

A. Overview Of The Effect Of Beverly Moran's False Statement, Credibility, And her Misconduct On The Job . . . . . .3 through 16

B. Administrator Deborah Kellman's False Statements And Her Misconduct On The Job 3,5,7,8,12,13,15,16

C. False Statements By Administrator Sally Rodriguez And Her Misconduct On The Job 7,8,9,12,13,16

D. Office Manager Lorraine Darden's False Statements And her Misconduct . . . . . On The Job 4,7,8,9,12,13,14,16

E. Assistant Deputy Commissioner James Pyatt's Misconduct In The Office . . .2,4,5,6,10,11,12,14,16

Conclusion. 16

TABLE OF CITATIONS

Page

Cased Cited:

Trans World Airlines v. Thurston
(469 U.S.111 (1985) 8

Disparate Treatment: Grigg V. Power Co.
401 U.S. 424 (1971) 11

Napue v. Illinois,
360 U.S. 264 (1959) 2

Giglio v. United States
405 U.S. 150 (1972) 2

United States v. Bagley,
473 U.S. 667 (1985) 2

Statutes Cited:

18 U.S.C. § 3231 1
28 U.S.C. § 1254 (i) 1
28 U.S.C. § 1291 1

United States Constitution Cited:

Fifth Amendment 1,9

Other Authority Cited:

Age Discrimination In Employment Act of 1967 11

Title VII Of The Civil Right Act Of 1964
(42 U.S.C. 2000 et. Seq.) 11

APPENDIX

Page

Appendix A – Order of the United States Court of
Appeals for the Second Circuit Denying
Petition for a Rehearing Dated April 9, 1999 . . . . . .1A through 9A

Appendix B – Opinion of the United States District Court
for the District of New York September 24, 1998 .10A through 19A

Appendix C – Memorandum Opinion And Order
of the United States District Court
for the District of New York August 14, 1996 . . . .20A through 25A

Petitioner Blanche Hutcherson, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the second Circuit denying Petitioner's application for rehearing consideration and affirming the opinion for dismissal of her case by the district court.

OPINIONS BELOW

The court of appeals affirmed the judgment of dismissal of case by memorandum opinion entered on September 24, 1998 *(4A) and it denied Petitioner's application for a by opinion on April 9, 1999. Reason "lacking in merit as to be frivolous within the meaning of 28 U.S.C. 1915 (e), Neitzke v. Williams, 490 U.S. 319 (1989)".

STATEMENT OF JURISDICTION

Petitioner was originally a plaintiff in a civil action brought in the United States District Court for the District of New York. The district court had subject matter jurisdiction pursuant to 18 U.S.C. 3231. The opinion to dismissal of case was entered September 24, 1998 and was docked on September 30, 1998. A timely appeal was filed with the United States Court of Appeals for the Second Circuit, which had appellate jurisdiction to review the judgment of the district court pursuant to 28 U.S.C. 1291. A memorandum opinion and judgment order affirming the judgment of dismissal of case was entered by the Second Circuit on April 9, 1999 (4A).

Petitioner seeks a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit. This Court has jurisdiction to review the judgment below pursuant to 28 U.S.C. 1254 (1).

CONSTITUTIONAL PROVISION

The Fifth Amendment to the United States Constitution and Petitioner's constitutional right to due process are pertinent to this case.

1. The notation "a" refers to the appendix annexed to this petition.

STATEMENT OF THE CASE

On April 9, 1999 The United States Court of Appeal Second Circuit denied Petitioner's request for a rehearing stating lack of merit in case. Petitioner requested an appeal because of the misconduct by the respondent's false allegations that had gone uncorrected of heard. Petitioner's constitutional rights to due process were violated. The United District Court Judge alleged Petitioner had not proved age discrimination and a jury would not find guilty of same. On September 24, 1998 the district court filed an opinion denying Petitioner a trial by jury, and dismissed the case.

In Napue v. Illinois 360 U.S. 264 (1959) this Court held that due process is violated when false evidence is allowed to go uncorrected and court decision are made. False testimony violates due process, was affirmed in Giglio v. United States, 405 U.S. 150 (1972), and again in Untied States v. Bagley, 473 U.S. 667 (1985).

Petitioner was 56 1/2 years old in December, 1992, had a good work record, numerous superior evaluations, and an outstanding evaluation, commendations from prior administrators, Commendations from prior administrators, a commendation in 1990 from the commissioner of the department, and had worked 26 years in the department with no problems. There was disparate treatment by respondent against her for several years by administrators under James Pyatt, Director, Field Manager, and later Assistant Deputy Commissioner. One commendation requested that she be promoted in 1987, but she was denied the opportunity. For March 1981 to December, 1992 she was denied an opportunity. The city favored younger, less experience, and less qualified employees. Bruce Bishop, age 31, replaced Petitioner after she was forced out of her career in 1992.

The New York City, New York City Department of Human Resources tolerated the existence of an intensely hostile environment in 1992 against Petitioner. Petitioner's complaints were disregarded by the respondent. Petitioner filed a lawsuit, and a Default Judgment was issued for damages and lost income on March 22, 1996.

NOTE: New York Divisions of Human Rights held petitioner's complaint from 12/92 to 6/95.

Director Beverly Moran made false statements during her deposition stating she had conferences with petitioner about the memorandums. The fact none of the seventeen memorandums were discussed. Two of the seventeen memorandums were never submitted to her when requested from respondent during the deposition process. She lied stating petitioner's subordinates were doing their work. She socialized during working hours with the subordinate in the presence of petitioner. She had one writing a memorandum to her making false statements. She had one subordinate (pure provisional never passed a civil service test) in her office for a week failing to inform petitioner, leaving 175 clients without the service of a worker. Petitioner didn't know where the worker was. She had to ask employees from other groups to help in emergency situations. She pulled another subordinate out her unit for a month without informing her. Again 175 clients were without the service of a worker. Petitioner had to ask employees from other units to take care of emergencies.

On Good Friday in 1992 Beverly Moran forced Petitioner to work all day alone in nine units. She allowed eight supervisors, two assistants to the office manger, and she took the day off. She executed an extreme negative attitude against Petitioner. Some of the administrators wrote false allegations in the 17 memorandums against her to bring disciplinary charges against her.

The Assistant Office Manager Deborah Kellman stated she would beat petitioner up outside the Yorkville Center after 5PM in the presence of Beverly Moran. Moran did nothing to bring disciplinary charge against Kellman. They knew each other prior to her coming into the Yorkville Center. Beverly Moran forced Petitioner to come into her office without her union representative when she was entitled. Petitioner's constitutional rights were violated. Marie Martinez threaten to beat her up, knock her false teeth out, and drag her out of the office. Again Beverly Moran failed to bring disciplinary charge against her. She stated later Petitioner "hit her". Beverly Moran used her statement to bring disciplinary charges against petitioner without discussing anything with her. In fact she failed to discuss any of the 17 memorandums she collected from the office manager and other employees with petitioner. Petitioner's Constitutional Rights To Due Process were violated. She had no record of where Martinez was hit on

her body, where incident took place, and any witness. The fact, no incident took place. This was an outright fabricated lie by Martinez. Petitioner was approached in July, 1991 by an assistance to the office manager with 7 or 8 inch butcher knife. She was working signing off cases as the employee came to her desk, knocked over a pile of cases on her desk, stabbed his knife into the cases while staring her in the eyes. Lorraine Darden didn't see a reason to file disciplinary charges against this worker. Beverly Moran didn't see a need to bring disciplinary charges. In fact, Office Manager Lorraine Darden came on the floor, put her arms around the employee's waist with the knife, and went off the floor laughing. Beverly Moran stated to petitioner "I will bring disciplinary charges again if a worker comes into my office and complains about you". I will do it as often as I have to. Petitioner's subordinates misconduct was supported by the administrators.

The City of New York, New York City Department of Human Resources sent a statement to the State of New York Executive Department, Division of Human Rights on June 9, 1993. The Respondent lied stating "On December 30, 1990 the complainant (Petitioner) was promoted to the civil service title, Principal Administrative Associate (PAA), Leve I and assigned to Respondent's ISC No. 19. This is an outright fabricated lie. The fact petitioner was promoted to this title in March 30, 1981. More false lies that Petitioner's job performance was not always satisfactory. Petitioner never received an unsatisfactory performance. In 1992 Beverly Moran forced Petitioner to cover 9 groups alone all day on Good Friday. She stated Petitioner was found guilty on at least two occasions during the period 1989 and October 1992.

The fact in 1989 the Field manager James Pyatt's girlfriend, Victoria Pitchford, who he had handed a promotion with 6 years only in the department to assistance office manager. She submitted false allegations and charges for disciplinary action against Petitioner stating she was her supervisor, and that she stated she would kick somebody's ass. It was Pitchford who threaten to fight petitioner in the office and another employee had to hold her back. James Pyatt had an extreme negative attitude towards Petitioner and would use his administrators to do his dirty work. Respondent failed to prove in the district court with one original document that Victoria Pitchford was ever petitioner's

supervisor. This is another outright fabricated lie. She never ever was her supervisor. It was Victoria Pitchford who came two feet from Petitioner's desk, turned up her rear and with a thin dress on showing her brief underpants. James Pyatt was standing in the aisle approximately 12 feet away with his arms folded across his chest watching her. On one occasion Petitioner was going to the elevator in the Waverly Center, and Pitchford stood at the door of the elevator, James Pyatt was inside the elevator. When Petitioner arrived at the elevator James Pyatt ran out. She went back to another supervisor in the center and told her what she had seen. The supervisor stated to her "Everybody knows about th :".

Assistant Deputy Commissioner James Pyatt used one of his personal friends who he handed a promotion to assistant office manger in the Yorkville Center (Deborah Kellman) to file false allegations against petitioner in 1992. She stated that Gale Godwin prior director before Beverly Moran had a conference with petitioner and stated she was going to bring her up on disciplinary charges. Gale Godwin denied at her deposition she made statement to Kellman. Fact, she never made statement to petitioner.

More lies from Deborah Kellman. She stated petitioner came into her office and knocked all the papers off her desk. She submitted a memorandum with this information for disciplinary charges that was never discussed with petitioner. Petitioner's Constitutional Rights To Due Process Were Violated. She caused two employees to fight in the office, and they ended up in Bellevue Hospital emergency room. Lorraine Darden or Deborah Kellman took no action to bring them on disciplinary charges.

> On November 5, 1992 and November 9, 1992 Petitioner wrote up two employees who were under her supervision for insubordination, and was threatened by Beverly Moran. She stated if another employee came into her office to complain about her, she could lose her job, pension or could be suspended without pay.

Beverly Moran denied making the above statement in the

memorandum to the Human Rights Division, but on 3/26/97 at her deposition she admitted charges. She is not a credible administrator. She knew Petitioner less than a year. She was in the department approximately 14 years in 1992 with less experience and less qualifications.

Respondent lied more stating Petitioner wrote up Mona Clark. This employee was never supervised by her, and she never wrote her up. She continued to lie stating the workers reported that petitioner was disrespectful, unprofessional, and verbally abusive in her relationships with staff. Petitioner's subordinates can't speak for approximately 200 staff member. Petitioner got along with staff members. It was Petitioner's subordinates and some administrators who were disrespectful, unprofessional, and verbally abusive in their relationship to petitioner. In fact they showed barbaric behavior. The Petitioner got along with staff for 26 years in the department. The 17 memorandums were written by the subordinates and some administrators ages 27, 31 35 and 39. In 1992 James Pyatt was age 50, with 28 years in the city, Beverly Moran age 53, 14 years , Loraine Darden age 46, 20 years, Deborah Kellman age 40, 19 years, Sally Rodriguez age 32, 8 years only, and Petitioner age 56 1/2 approximately 30 years with the city.

Petitioner transferred to the Yorkville Center in December 1990. Gale Godwin, Director. Memorandums were written by petitioner's subordinates, and her immediate supervisor that were never seen or discussed with her. Petitioner's Rights To Due Process Were Violated. Gale Godwin was transferred out of the Yorkville Center in 1992. James Pyatt assigned Beverly Moran as director of the center.

James Pyatt had been the director of the Waverly Center where Petitioner had been a supervisor. He became field manager, and later assigned to assistant deputy commissioner. In the Waverly Center he came to petitioner's cubicle with a supervisor. The supervisor stated "Any one 51 years of age should go home". James Pyatt stated to her in the Waverly Center "You will never be promoted". Petitioner's Constitutional Rights Were Violated. All employees should be given an opportunity equally. Petitioner continued to receive barbaric negative treatment under his power, and control. After he assigned Beverly Moran to the Yorkville it got worse.

Beverly Moran exhibited an extreme negative attitude towards Petitioner. She began yelling at her in front of her subordinates. She failed to explain to her why she made the statements "You can lose you job, be suspended, or lose your pension". Petitioner never knew why she was called into her office.

Office Manager Loraine Darden collected from petitioner's subordinates, Sally Rodriguez and Deborah Kellman, assistants to the office manger approximately 9 memorandums in two months (June and July, 1992) making false and misleading statements about petitioner. They failed to discuss the memorandums with her. Petitioner's Constitutional Rights To Due Process Were Violated. Lorraine Darden gave these memorandums to Beverly Moran to file disciplinary charges against petitioner. Again Petitioner's Constitutional Rights To Due Process Were Violated. Beverly Moran sent 17 memorandums (some supposedly had been written prior to her coming to the center that she knew nothing about). She failed again to discuss memorandums with petitioner. She filed the memorandums for disciplinary charges in September, 1992 while petitioner was on vacation. The City of New York, New York City Department of Human Resources failed to discuss the 17 memorandums with her before finding her guilty of all charges. Petitioner's Constitutional Rights To Due Process were violated again.

In June, 1995 a meeting was held at the Human Rights Division, 55 West 125th Street, New York, New York 10037. Present were a Human Rights representative for petitioner, who had never spoken to her about her case, Beverly Moran, Sally Rodriquez, Chuck Waxman, head of the New York City Department of Human Resources, and another lady in a red coat. No one introduced themselves at the meeting. Petitioner had to ask her representative who was holding her case who he was at the meeting. Petitioner was asked to state her case. She stated that she didn't know why disciplinary charges were brought against her. Petitioner's representative left the meeting, and returned with several papers, placed the papers in front of her. She looked down and began to pick up the papers. When she raised her head up, all of the above administrations in the meeting were gone leaving petitioner alone with her witness. This was the first petitioner had seen any of the memorandums that had been written by Sally Rodriguez (very vicious

memorandum). She stated what one of her subordinates had told her about petitioner. This subordinate never passed a civil service test, and was a pure provisional that would sit at her desk from 8AM to 10AM eating her breakfast, and failing to work on her emergency days in emergencies. Sally Rodriguez had a close relationship with James Pyatt, and he handed her a promotion to an administrator with only 4 years in the department at age 28. Sally Rodriguez abused her power by presenting false and misleading statements in her memorandum. She stated to Petitioner "You will always be a supervisor". This is an Age Based Remark as evidence of age discrimination. The attitude of Sally Rodriguez, and petitioner's subordinated were barbaric. They were extremely rude to petitioner and management tolerated it. One of petitioner's subordinates Valerie Saunder came to her desk and yelled to the top of her voice about petitioner, and could be heard all over the floor. Sally Rodriguez, Deborah Kellman, Lorriane Darden, and Beverly Moran closed their doors. It was a lady from the control section who came and pulled her out of the unit. The subordinate yelled approximately 15 minutes. Sally Rodriguez came to petitioner's unit and laughed with her subordinates during working hours. She failed to write Maria Martinez up, and she was a big trouble maker in the unit. They were extremely rude to petitioner in 1992, and the administrators who wrote the memorandum were laughing at petitioner.

Petitioner worked 26 years in the department and never had a problem working with staff and administrators. She filed a lawsuit with the Federal District Court on age discrimination through EEOC. The case was filed within the 90 days. In Trans World AirLines, Inc. v. Thurston (469 US 111 (1985) an employer's conduct is willful, if it knows or shows reckless disregard for whether its conduct is prohibited by the ADEA. (ID at 128) Phonographic pictures of males and female private part were placed in front of Petitioner's face while she worked at her desk in the Waverly Center when James Pyatt was the director. Her immediate supervisor laughed at this action.

Petitioner's barbaric treatment by the respondent in 1992 were intentional acts. The City of New York, New York City Department of Human Resources was offering an early retirement package to city employees. The petitioner was stigmatized by the respondent's character assassination, false allegation, age discrimination, and was forced out of

her career. She found out that a younger employee age 31 replaced her.

In November, 1992 Beverly Moran stated to petitioner "I will bring disciplinary charges again if an employees comes into my office and complains to me about you." She stated "I will do it as often as I have to." She was seen frequently on the floor in the presence of petitioner socializing with her subordinates during working hours. She became extremely vicious towards her.

Respondent's personnel administrators placed memorandums in petitioner's personnel folder without discussing them with her. The Fifth Amendment to the United States Constitution and Petitioner's constitutional right to due process are pertinent to this case. One note in her folder stated "Is Ms. Hutcherson A Nut ?" Someone was speaking to Beverly Moran. No date or signature on this memorandum. It was submitted in the district court. The respondent failed to let petitioner see her personnel folder during the deposition process, but made copies from her folder, and had them hand delivered to her.

Lorraine Darden, Office Manager denied Petitioner the right to serve on jury. In fact twice she denied the right to serve on jury. The first time this happen to her in the department. Deborah Kellman assistant to the office manager stated if she took time off for jury duty it would be reflected in her evaluation. Lorraine Darden lied in her memorandums stating petitioner came into her office and banged on her desk in a meeting. She failed to bring an administrator up on disciplinary charges who came to petitioner's desk with a 7 or 8 inch butcher knife. She had one of petitioner's subordinate constantly in her office during working hours, and petitioner could not get overdue work completed from this worker. The subordinate became a big trouble maker. She left the telephone on the floor, and became angry with petitioner when she asked her to place phone on her desk. She came to petitioner's desk pointing her finger in her face stating " I will knock your false teeth out, beat you up and drag you out of the office." Beverly Moran, Sally Rodriguez, and Lorraine Darden failed to write her up or bring disciplinary charges against her. They allowed their close friends in the Yorkville Center to get away with everything.

The case went to the United States District court in 1995 to

U.S.D.J. Miriam Goldman Cedarbaum. On 2/12/95 Leonard Bernikow, United States Magistrates Judge was assigned to preside over the deposition process. Petitioner requested a lawyer, but was unsuccessful.

Petitioner interviewed eleven ligigants, one was her witness a clerk. All the other litigants were administrators. James Pyatt, Asst. Deputy Commissioner, Harold Geneen, Field Manager, Gale Godwin, Beverly Moran, directors, Lorraine Darden, Sharyn Brown, Victoria Pitchford, officers managers, Deborah Kellamn, Sally Rodriguez, Lindsay Watson, assistant to the office manager, and Hassan Abdul Hamid, clerk and petitioner's witness. The depositions took place at 500 Pearl Street beginning 2/27/97, and ending 6/8/97. Three administrators had to be supoenaed, Beverly Moran, Sally Rodriguez, and James Pyatt. James Pyatt had to be subpoenaed twice before his appearance at his deposition. Leonard Bernikow, United States Magistrate Judge was informed by petitioner that the respondent altered approximately eight depositions out of twelve. He warned petitioner that she would be at a disadvantage in a conference if she didn't have a lawyer. At the end of that deposition process the judge wrote an opinion. The case went to U.S.D. J. Miriam Goldman Cedarbaum's chamber. The petitioner and respondent had an appointment in her chamber, but the counsel handling the case for the city didn't show up, but sent another lawyer in his place. Questions were asked by the judge that this lawyer couldn't answer. The judge decided that case would be handled in writing.

The respondent wanted to dismiss the case, but the judge wrote an opinion to continue dated August 14, 1996. Paul A. Crotty, Corporation counsel of the City of New York, Attorney for Defendant, 100 Church Street, New York, New York 10007, and James A. Girillo, Assistant Corporation Counsel were assigned to the case. Paul A. Crotty, Corporation Counsel left the city, and Jefferey D. Friedlander, Acting Corporation Counsel of the City of New York, Attorney for the City of New York, New York, 100 Church Street. Rm, 2-155, New York, New York 10001 took his place.

Petitioner was asked to transfer out of the Yorkville Center in 1991 by Gale Godwin, director, with no explanation for her request. She had transferred from the Waverly Center to the Yorkville center in December, 1990 to get away from James Pyatt. It was when petitioner

saw James Pyatt in the Yorkville center that she was asked to leave. He brought Sally Rodriguez into the Yorkville Center and placed her over petitioner as her immediate supervisor. She was 32 years of age and 8 years only in the department. She was a personal friend of James Pyatt. James Pyatt handed out numerous promotion to younger employee, and placed them over petitioner. In fact, Lindsay Watson couldn't perform her duties at a supervisor's level. At the end of each month her work had to be distributed to other supervisors to be completed. She was handed a promotion to an administrator and placed over petitioner. She was age 32 and petitioner age 51. She could not obtain an associate degree in 4 or 5 years. Petitioner went to school at night while working and earned a BBA from Baruch College in 6 years, graduating cum laude, and clearly able to do the job was denied a promotion. In fact respondent failed to post a position was open in the center. Documentations were submitted verifying outstanding, superior evaluations, numerous commendations from administration. The New York City Department of Human Resources Commissioner gave her a commendation in 1990. He left the department in 1991.

Petitioner was forced out of her career by the actions of Beverly Moran, Director, and James Pyatt. Asst. Deputy Commissioner in 1992 when the department was offering an Early Retirement Package to city employees. There was severe pervasive barbaric negative actionduring 1992 toward petitioner. Their action was wilful age discrimination. In the disciplinary charges brought by Beverly Moran submitting 17 memorandums without discussing them with her. Petitioner's Constitution Rights To Due Process were violated. James Pyatt's attacks against petitioner from his girl friends and personal friends he handed promotions to as administrators prove age discrimination. Replacing a younger employee age 31 to replace her proves age discrimination existed. See Age Discrimination in employment act of 1967; Disparate Treatment; Griggs v. Duke Power Co. 401 U.S. 424 (1971). Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000et. Seq.) Petitioner was told by some of her subordinates in the Yorkville "We have to get rid of Ms. Hutcherson". "When are you going to retire", and "you know you can retire." These statements were made numerous times in 1992. The administrative staff was taking action simultaneous with the petitioner's subordinates statements.

Petitioner worked approximately thirty years, and never received one meritorious increase, but saw younger employees receive same. Some younger employee received meritorious increases frequently. The respondent took action with disregard for petitioners's long service, and her emotional investment in her job. Other employees were not treated this way. Age discrimination played a role in respondent's barbaric, negative, and bias action against petitioner in 1992. The petitioner's conduct was good. It was the misconduct of some "of the administrative staff, and the subordinates" who acted in a barbaric negative manner against her. The respondent proffered reasons are pretextual. The respondent cannot use conduct and work performance as a reason for Beverly Moran's action. Their misbehavior cannot be ignored by the respondent.

Petitioner's brother died in February, 1992. No collection was taken up, but every time some one's relative in the office died. They came to petitioner for money . She gave a dollar each time. The supervisor who sat directly in front of her, turned around, looked in her eyes and stated for over two weeks "Did your brother really die"? The supervisor was Mr. Freidman who laughed while making the statement.

Deborah Kellman had subordinates of petitioner in her office when she wasn't her immediate supervisor. She had them writing memorandums to her about petitioner. She had two employees fighting in the office, and they ended up in Bellevue Hospital Emergency room for treatment. The employees fighting were young Spanish employees. Lorraine Darden, office manager failed to write them up or bring disciplinary charges against them. Petitioner's subordinates would be yelling all over the floor during working hours laughing. Sally Rodriguez, Deborah Kellman, Lorraine Darden, and Beverly Moran closed their doors and did nothing. Petitioner had not been allowed to carry out her job properly for over two years and could not continue to endure the abuse. The respondent was not correcting the misconduct. There are no proven deficiences in the performance or conduct of petitioner. Only outright fabricated lies by administrators that James Pyatt had handed promotion who were his girlfriends, close personal friends, and their friends. Petitioner had worked 26 years for the department before James Pyatt's women began to attack her and fabricate lies.

James Pyatt began to state petitioner doesn't get along with anyone. Petitioner doesn't get along with anyone. Petitioner worked 26 years in the department and no one made such a negative statement about her.

Petitioner had experience accumulated with age and should have benefited from increased pay for greater seniority. Formal education should have been counted. The Respondent knew of the misconduct by his administrators, and showed reckless disregard for the matter and allowed it to go on. Their acts were intentional. Documents were submitted to show respondent brought petitioner up on disciplinary charges in 1989, and 1992 on false allegations. This did not happen to other employee in the department. Petitioner had the ability to do the job, respondent's misconduct was wilful and reckless with disregard for petitioner age 56 1/2. Petitioner's Consitutional Rights To Due Process Were Violated on numerous occasions.

Beverly Moran, Director, Lorraine Darden, Office Manager, Deborah Kellman, and Sally Rodriguez, assistants to the office manager aided peitioners subordinates to write the memorandums with false misleading statements. Subordinates were seen in their offices by petitioners during working hours, when they ha d outstanding overdue work to be completed. In fact, Deborah Kellman had petitioner's subordinates in her office when she wasn't petitioner's immediate supervisor and had Valerie Saunders write a memorandum about petitioners addressed to her.

Beverly Moran had one of petitioner's subordinates in her office for a week, failing to inform petitioner, and leaving 175 clients without the service of a worker. Moran had this worker write a memoradum against petitioner addressed to her.

Sally Rodriguez allowed a male employee that petitioner didn't know sit in petitioner's unit over three months playing with the females in petitioner's unit. Rodriguez failed to explain to Petitioner why he sat in her unit. Petitioner had trouble with her subordinates because of this situation.

Lorraine Darden had petitioner's subordinates running in her office all during working hours and petitioner had trouble getting much work out of her subordinates. Petitioner's subordinates got vicious when petitioner asked them for overdue work. They weren't meeting their

dealines, but yelling and laughing all over the floor with Sally Rodriguez, Deborah Kellaan, Lorraine Darden, and Beverly Moran. Clients were calling on the telephone and the workers weren't at their desk, but in the administrator's offices. Petitioner received numerous calls from clients complaining about petitioner's subordinates slamming the phone down on them when they called for service. Some of the clients were crying over the phone while speaking to petitioner. Petitioner subordinates were not doing their jobs.

Respondent has deemed the statements from Beverly Moran as material facts in this case. Moran's statements are basically a farce, Moran told one of petitioner's subordinates that she could take a half day off without informing petitioner. Moran collected 17 memorandums with unsubstantiated assumptions from her administrators and petitioner's subordinates without discussing them with petitioner before submitting them for disciplinary charges. Clearly, Petitioner's Rights To Due Process were violated. Moran failed to verify the truthfulness in the memorandums before submitting them for disciplinary charges, another farce.

Respondent has speculated that Moran has submitted genuine facts in this case. Another farce because Moran is not telling the whole truth in this case.

James Pyatt brought Beverly Moran into the Yorkville Center in 1992, and petitioner was forced out of her career by Moran at the age of 56 1/2 when The City of New York, New York City Department of Human Resources were offering a Retirement Package to city employees in December, 1992. Respondent has further speculated that Lorriane Darden, Office Manager, Deborah Kellman, Sally Rodriguez, Assistants to the office manager and Petitioner's subordinates have told the whole truth by merely submitting memorandums to Beverly Moran for disciplinary actions. Respondent failed to discuss the memorandums with petitoner before finding her guilty of all charges. Another farce in this case. Again Petitioner's Constitutional Rights to Due Process were violated.

Respondent lied by stating Beverly Moran, director, counseled petitioner. This Moran was incable of doing because she only yelled at petitioner in her office, and exhibited an extremely barbaric attitude

towards petitioners. The respondent does not believe that his administrators had any bad conduct. Respondent's conclusory belief that the memorandums told the whole thruth is a farce.

Moran failed to take disciplinary action against her administrators, and petitioner's subordinates. They were her friends. Petitioner saw Moran on the floor socializing with petitioner's subordinates during working hours when they were behind in their work, Deborah Kellman and Sally Rodriguez came on the floor in the presence of petitioner laughing with petitioner's subordinates again preventing subordinates from getting their overdue work done, and meeting necessary deadlines.

Darden, had Maria Martinez, petitioner's subordinate, in and out of her office daily during working hours. Maria Martinez became a big trouble maker in the unit. Martinez was the subordinate that stated to petitioner at petitoner's desk, "I will beat you up, knock out your false teeth and drag you out of the office." Martinez lied in her memorandum to Darden stating Petitioner hit her. Darden failed to discuss this memo with Petitioner before, giving it to Beverly Moran to submit for disciplinary charges. Petitioner's Consitutional Rights to Due Process again were violated. Petitioner received the disciplinary charges and Darden came to her desk laughing into petitioner's face, as well as Deborah Kellman, and Sally Rodriguez.

Respondent has aided and supported the actions of Ms. Moran's outright fabricated lies, her adminstrators, and petitioners subordinate without any substantiated facts. Petitioner was harassed by Moran's administrators and petitioner's subordinates until she clocked out on the last day of her employment with HRA. In fact Marie Martinez yelled out over the floor almost all day "Retirement Time" twenty-five or more times. Petitioner saw Deborah Kellman, Sally Rodriguez, Lorraine Darden laughing on the floor with petitioner's subordinate. Moran stated they were acting professional, and their conduct had improved. Another farce.

The respondent went to the extent to alter several depositions to submit a defense for Moran. Petitioner asked the Court Reporter at her deposition how long it would take to type. The court reporter stated "3

days." Petitioner waited approximately 1 1/2 to 2 months before petitioner recieved her deposition to review. Petitioner was shocked at what she was reading. Other depositions were held over a month, and Victoria Pitchford's deposition was never returned to petititoner by respondent.

Respondent alleges Moran counseled petitioner. The three times petitioner was in Beverly Moran's office. First time with Deborah Kellman. Petitioner has a memorandum to verify this meeting. Deborah Kellman stated in this meeting that she would beat up petitioner outside of the Yorkville Center after 5pm, and Moran did nothing. Second meeting Moran forced petitioner into her office when she requested her union representative that she was entitled. Petitioner's Constitutional Rights To Due Process again violated. At this meeting she yelled at petitioner in a barbaric manner stating that petitioner could lose her job, pension, or be suspended and lose pay. Moran failed to explain to petitioner why she was making these remarks. Petitioner left her office wondering what was going on in the office. Third time Moran handed petitioner the disciplinary charges the day petitioner returned from her vacation in September, 1992.

Respondent is speculating these were counseling sessions given by Moran (a farce). Moran had fabricated numerous lies against petitioner that she couldn't face petitioner, and stayed from work the week before petitioner left the Yorkville Center.

James Pyatt's power and control in the city department increased the burden on petitioner to defend herself against constant lies by administrators, and her subordinates. Petitioner never experienced this misconduct by prior administrators in 26 years with the city.

Petitioner requested from respondent the educational background of the administrators in the Yorkville Center in 1992, but was denied this information.

Respondent wilfully, maliciously, and deliberately entered upon a course of action designed with discriminatory purpose against petitioner on account of her age in 1992.

For all the foregoing reasons, the judgement of dismissal of case against Petitioner must be reversed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that this Court should grant petitioner's petition for issuance of a writ of certiorari.

Respectfully submitted:

BLANCHE HUTCHERSON, PRO SE
341 West 24th Street Apt. 4H
New York, New York 10011
(212) 691-4210

Appendix A -

MEMORANDUM OPINION OF THE UNITED SATES COURT OF APPEALS FOR THE SECOND CIRCUIT, APRIL 9, 1999

Filed

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT
NO. 98-9404

BLANCHE HUTCHERSON

Appellant

vs.

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES

Appellee

On appeal from the United Sates District Court for the District of New York,
District Judge: Honorable Miriam Goldman Cedarbaum

BEFORE: NEWMAN, LEVAL and SOTOMAYOR, Circuit Judges

(Filed: April 9, 1999)

Appendix A

Blanche Hutcherson
341 West 24th St.
Apt. #4H
New York, NY 10011

INDIV PROSE
SUBMTD CLOSED
PNL QO2 2

GENERAL DOCKET FOR:
Second Circuit Court of Appeals
Files 10/26/98
Court of Appeals Docket #: 98-9404
Nsuit: 3442 CIVIL RIGHTS-Job
Hutcherson
v.
The City of New York, et al
Appeal from: U.S. District Court SDNY

CASE TYPE INFORMATION:
1) Civil
2) Private
3) None

LOWER COURT INFORMATION:
District: 0280-01: 95-cv-10074
Trial Judge: Miriam Goldman Cedarbaum
Magistrated Judge: Leonard Bernikow
Date filed: 11/29/95
Date Order/Judgement: 9/29/98
Date NOA Filed: 10/5/98

FEE STATUS: Paid

PRIOR CASES: None

CURRENT CASES: None

PANEL ASSIGNMENT: Docket as of April 9, 1999 1:22pm *Page 1*

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

As a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the ninth day of April one thousand nine hundred and ninety-nine,

Present:

Hon. Jon. O. Newman,
Hon. Pierre N. Leval,
Hon. Sonia Sotomayor,
Circuit Judges.

98-9404

Blanche Hutcherson,

Plaintiff-Appellant

v.

The City of New York, New York City Department of Human Resources,

Defendent-Appellees.

Appendix A

A motion having been made herein by appellant pro se for assignment of counsel, upon consideration thereof, it is ordered that said motion be and it hereby is denied, and the appeal is dismissed as so indisputably lacking in merit as to be frivolous within the meaning of 28 U.S.C. 1915 (e) See Neitzke v. Williams, 490 U.S. 319 (1989). Aside from the alleged statements made by her co-workers concerning retirement, Hutcherson has produced no evidence to show that she was treated differently because of her age. See Thomas v. Sears, Roebuck & Co., 144 F. 3d 31, 33 (1st cir 1998) (stray comments are insufficient to meet the plaintiff's burden in an ADEA case"); Cone v. Longmont United Hospital Association, 14 F. 3d 526,530 (10th cir. 1994) (age-related comments by non-decision makers are not material in showing the hospital's action was based on age discrimination.")

A TRUE COPY
Carolyn Clark Campbell
By: "s/_____".

FOR THE COURT
Carolyn Clark Campbell Clerk
By: "s/_____".

DEPUTY CLERK

Issued as Mandate: 4/9/99

April - 9
INDIV PRO SE
SUBMTD CLOSED
PNl QO2 2

Proceedings include all events.
98-9404 Hutcherson v. The City of New York, etc.al

Blanche Hutcherson
Plaintiff - Appellant

Blanche Hutcherson
212-691-4210
COR LD NTC
341 West 24th St.

Appendix A

	Apt. #4H New York, NY 10011
THE CITY OF NEW YORK Defendant Appellee	Jeffrey D. Friedlander, Esq 212-788-1065 (COR LD NTC ret] Corporation Counsel's
Office	100 Church Street New York, NY 10007
NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES Defendant - Appellee	Jeffrey D. Friedlander, Esq (See above) [COR LD NTC ret]

Docket as of April 9,1999 1:22 pm Page 2

INDIV PROSE
SUBMTD CLOSED
PNL Q02 2

Proceedings include all events.
98-9404 Hutcherson v. The City of New York, et al

Official Caption 1/
Docket No. [S]: 98-9404

Appendix A

BLANCHE HUTCHERSON,
Plaintiff - Appellant,

THE CITY OF YORK, NEW YORK CITY
DEPARTMENT OF HUMAN RESOURCES,

Defendants-Appellees.

Authorized Abbreviated Caption 2/

Docket No. [s] 98-9404
HUTCHERSON V. THE CITY OF NEW YORK

Fed. R. App. P. Rule 12 [a] and 32 [a].
For use on correspondence and motions only.

Defendant - Appellee

Docket as of April 9, 1999 1:22 pm Page 3

Appendix A

INDIV PROSE
SUBMTD

CLOSED

PNL Q02 2

Proceedings include all events. 98-Q404
Hutcherson v. The City of New York, et al.

10/26/98	Copy of notice of appeal and district court docket entries on behalf of Appellant Blanche Hutcherson filed [98-9404] (ps35)
10/26/98	Note: This appeal was PRO SE when filed (ps 35)
10/26/98	District court opinion dated September 24, 1998, endorsed by the Honorable Miriam Goldman Cedarbaum, filed. (ps35)
10/26/98	Copy of district court judgment, dated September 29, 1998, endorsed by the Deputy Clerk, filed. (ps35)
10/26/98	Copy of receipt re: repayment of docketing fee filed on behalf of Appellant Blanche Hutcherson receipt #: E327684. [98-9404] (ps35)
10/26/98	Record on appeal filed. (Original papers of district court.) Number of volumes: 2 (ps35)
11/9/98	Scheduling order #1 filed. Appellant's brief and appendix due on12/9/98. Appellee's brief on 1/11/99. Argument as early as week of 2/22/99. (am)

Appendix 4A

11/9/98	Notice to counsel and pro se: Scheduling Order #1 filed 11/9/98. (am)
11/9/98	Appellant Blanche Hutcherson motion for assignment of counsel pro bono FILED (w/pfs) [1288289-1] (ps35)
12/8/98	Appellant Blanche Hutcherson brief RECEIVED. Problem: pending motion for the assignment of counsel. (em)
12/8/99	Appellant, Blanche Hutcherson appendix received. Problem: pending motion for assignment of counsel.
(em)	
4/9/99	Order FILED DENYING motion for assignment of counsel pro bono [1288289-1] by Appellant Blanche Hutcherson, endorsed on motion dated 11/9/98. "A motion having been made here in by appellant pro se for assignment of counsel, upon consideration thereof, it is ordered that said motion be and it hereby is denied, and the appeal is dismissed as so indisputably lacking in merit as frivolous within the meaning of 28 U.S.C. 1915 (e). See Neitzke v. Williams, 490 U.S. 319 (1989). Aside from the alleged statements made by her co-workers concerning retirement, Hutcherson has produced no evidence to show that she was treated differently because of her age. See Thomas v. Sears, Roebuck & Co., 144 F. 3d 31, 33 (1st Cir. 1998) ("stray comments are insufficient to meet the plaintiff's burden. In an ADBA case"): Cone v. Longmont United Hospital Association, 14F. 3d 526, 530 (10th Cir. 1994) ("age-related comments by non-decison makers are not material in showing the hospital's action was based on age discrimination"). (Before: JON, PNL, SS) (ps35)

INDIV PROSE
SUBMTD CLOSED
PNL Q02 2

Proceedings include all events.
98-9404 Hutcherson v. The City of New York, et al

4/9/99	This appeal [98-9404] is -disposed by the order dated April 9, 1999. (ps35)
4/9/99	Certified copy of order dated 4/9/99 disposing of the appeal issued to District court. (ps35)
4/9/99	Notice to counsel and pro se re: order dated April 9, 1999. (ps35)

APPENDIX B - OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEWYORK FILED SEPTEMBER 24, 1998

UNITED STATES DISTRICT COUT
FOR THE DISTRCIT OF NEW YORK

Hon. Miriam Goldman Cedarbaum

Civil Action No 95 Civ. 10074

BLANCHE HUTCHERSON,

Plaintiff,

v.

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES,

Defendant.

ORDER

For the foregoing reasons, defendant's motion for summary judgment is granted.

IT IS THIS 24th day of September, 1998:

SO ORDERED

MIRIAM GOLDMAN CEDARBAUM, U.S.D.J.

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKx

BLANCHE HUTCHERSON,

Plaintiff, **95 CIVIL 10074 (MGC)**

-against-

JUDGMENT

THE CITY OF NEW YORK, NYC
DEPT. OF HUMAN RESOURCES,

Defendant.

_____x

Defendant having moved for summary judgement and the matter having been come before the Honorable Miriam Goldman Cedarbaum, United States District Judge, and the Court on September 24, 1998 having rendered its Opinion (81286) granting defendant's motion for summary judgment, it is,

ORDERED, ADJUDGED AND DECREED: That defendant's motion for summary judgment is hereby granted for the reasons stated in the Court's Opinion (81286) dated September 24, 1998

Dated: New York, New York
September 29, 1998

JAMES M. PARKISON

_____
Clerk of Court

Sept 29 1998 3PM

BY:
"s/_____".
Deputy Clerk

THIS DOCUMENT WAS ENTERED ON THE DOCKET ON 9/30/98

Appendix B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK x

BLANCHE HUTCHERSON,

Plaintiff,

95 civ. 10074 (MGC)

-against-

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES,

OPINION

Defendant.

---------- x

APPEARANCES:

Blanche Hutcherson
Plaintiff Pro Se
341 West 24th Street, Apt. 4H
New York, New York 10011

PAUL A. CROTTY
Corporation Counsel of the City of New York
JEFFREY D. FRIEDLANDER
Acting Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street
New York, New York 10007

By: James A. Grillo, Esq.
Assistant Corporation Counsel

Appendix B

CEDARBAUM. J.

This is an action under the Age Discrimination in Employment Act. ("ADEA"), 29 U.S.C. 621 et seq. Defendant moves for summary judgment. For the reasons discussed below, the motion is granted.

FACTS

The following facts are undisputed. Plaintiff was born on May 29, 1936. She was employed by the New York City Human Resources Administration ("HRA") from 1962 to 1992. Starting in December of 1990, she was employed at the Yorkville Income Support Center (the "Yorkville Center"). Plaintiff's immediate supervisor during the first half of 1991 was Deborah Kellman. After July of 1991, her immediate supervisor was Sally Rodriguez, who was 32 years old. In January of 1992, 53 year old Beverly Moran succedded 47 year old Gale Godwin as Director of the Yorkville Center. Plaintiff was then 55.

In the spring of 1992, Moran began receiving numerous complaints from at least four of plaintiff's subordinates and from plaintiff's two supervisors regarding plaintiff's conduct, management style and attitude. (Moran Decl. ¶¶ 4-5.') The complaints included at least six memoranda from plaintiff's co-workers. (Id.; Def. Ex. G.) Plaintiff contends that she was mistreated and "disrespected" by her subordinates and co-workers as well as by Kellman, and that supervisors Kellman and Rodriquez did nothing to stop the (P1. 56.1 Stat. ¶ 8.) Plaintiff also contends that she was not shown the memoranda of complaint and that they were not discussed with her. (Id. ¶ 9.) In addition, plaintiff states that Moran did not verify the truthfulness of the

---

1 Plaintiff objects to defendant's reliance on the declaration of Beverly Moran in support of its motion for summary judgment on the ground that the discovery period closed before the declaration was executed. A declaration submitted in support of a motion, however, is not "discovery" goverened by the parties' case management schedule. Moreover, Rule 56 specifically permits the parties to submit affidavits (or, under 28 U.S.C. 1746, delcarations) in suport of a motion for summary judgment.

complaints and failed to collect memoranda from plaintiff about plaintiff's subordinates. (Id.¶ 10.) These contentions by plaintiff are accepted as true for purposes of this motion.

In the spring of 1992, Lorraine Darden, Deputy Director and Office Manager at the Yorkville Center, recommended to Moran that disciplinary action be taken with respect to plaintiff. In a June 3, 1992 memorandum in support of this recommendation, Darden cited nine memoranda that had been written by plaintiff's supervisors and subordinates complaining about her allegedly inappropriate, uncooperative and insubordinate behavior, and stated that plaintiff's behavior and not improved despite meetings between Darden and plaintiff. (Moran Decl. ¶ 5: Def. Ex. F.) Moran met with plaintiff to discuss her conduct toward her co-workers. (Moran Decl. ¶6.) According to plaintiff, Kellman was present at this meeting in Moran's office threat-to "beat her up." Moran did not reprimand Kellman. (P1. 56.1 Stat. ¶16.) Moran forwarded a disciplinary packet regarding plaintiff to HRA's employee discipline unit after plaintiff, according to Moran, refused to improve her conduct and to act professionally toward her co-workers. (Moran Dep. at 20[2]: Moran Decl. ¶6: Def. G.) Moran told HRA's Employee discipline unit that plaintiff was behaving in an unprofessional, uncooperative, hostile and intimidating manner toward various supervisors, subordinates and other co-worker.(Def. Ex. G.) Moran did not recommend any specific penalty, and did not request that plaintiff be suspended or terminated. (Id.; Moran Decl.¶ 7.)

In October of 1992, plaintiff was served with disciplinary charges and specifications issued by HRA's Employment Law Division, Office of Legal Affairs. Plaintiff was charged with insubordination, misconduct and conduct unbecoming an HRA emnloyee. Plaintiff attended an informal disciplinary conference on October 29, 1992 along

---

2 Plaintiff alleges that defendant altered parts of the deposition testimony of several Yorkville Center employees as well as the questions that plaintiff asked at those depositions, a charge which defendant denies. It is undisputed that plaintiff and her witness, Hassan Abdul-Hamid, have made extensive "corrections" to their depositions, however, are not material, and the parties, dispute in this regard does not affect the resolution of ths motion.

with her union representitive. On December 2, 1992, the Disciplinary Specialist found plaintiff guilty of all timely charges and assessed plaintiff a penalty of five days pay. Plaintiff initiated an appeal pursuant to the collective barganing agreement between her union and New York City, but later abandoned the appeal. Plaintiff retired at the end of 1992. Moran did not order, urge or suggest that plaintiff retire, and only learned that plaintiff had applied to retire when she was informed of this fact by HRA'S personnel office. (Moran Decl. 12.)

Plaintiff contends that the disciplinary charges were based on false statements made by other employees. She also contends that she complained to Moran about the abusive and disrespectful behavior of other employees and that Moran failed to reprimand them. In addition, plaintiff states that Moran never advised plaintiff that she was sending a disciplinary packet to HRA's employee discipline unit. Plaintiff sets out a litany of other complaints regarding her employment, both at the Yorkville Center and at other HRA locations. Plaintiff claims that Moran and her supervisors and subordinates were uncooperative, abusive and disrespectful towars her. Specifically, plaintiff presents evidence that other Yorkville Center employees (including her supervisors) yelled loudly at times, and that certain coworkers verbally abused her and threatened her with physical injury on many occasions and suggested at times that she retire. On one occasion according to plaintiff, a subordinate threatened to "knock out" plaintiff's false teeth. Plaintiff also asserts that another subordinate approached her on the day that she received the disciplinary charges from Moran and told her "You can always retire." She also presents evidence that on one occasion a co-worker stabbed case record's on plaintiff's, desk with a knife, that a co-worker, wrongfully moved her personal property, and that Moran permitted all unit supervisors except plaintiff to take off from work on Good Friday, in 1992. Finally, plaintiff states that a number of the employees who engaged in the foregoing conduct frequently socialized with Moran, and plaintiff's supervisors while at work.

DISCUSSION

Summary judgment is authorized when "the pleadings,

depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" Fed.R. Civ P.56(c): see Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). In examining the record, the court must reslove all abiguities and draw all reasonable inferences aginst the moving party. Schwapp v. Town of Avon, 118 F.3d 106, 110 (2d Cir. 1997): see Celotex, 477 U.S. at 330 n.2. The judge's role in summary judgment is not "to weigh the evidence and determine the truth of the matter but to determine the truth of the matter but to determine whether there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. at 242, 249 (1986). To defeat a motion for summary judgment, the party with the burden of proof must make a showing sufficient to establish the existence of every element essential to that party's claim. Celotex, 477 U.S. at 322.

The ADEA makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, term, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. 623 (a) (1). In order to establish a prima facie case of age discrimination, plaintiff must proffer sufficient evidence to support a findling that (1) she is in the protected age group: (2) she was qualified for the job; (3) she suffered some detrimental employment change: and (4) the act complained of occurred under circumstances which give rise to an inference of age discrimination. See Norton v. Sam's Club, 145 F.3d 114, 118 (2d Cir. 1998): David v. Apfel, Levy, Zlotnick & Co., 1993 WL 245521, at *5 (S.D.N.Y. June 25, 1993).

Defendant argues that plaintiff has failed to establish age discrimination with respect to the disciplinary charges and threats of terminatin because the acts of which she complains did not occur under circumstances which give rise to an inference of age discrimination. Plaintiff claims that defendant discriminated against her because of her age by falsely bringing her up on disciplinary charges and threatening her with termination. However, even if plaintiff could make out a prima facie case of age discrimination defendant has articulated a legitimate, non-discriminatory reason for bringing plaintiff up on disciplinary

charges and threatening her with termination.[3] Defendant has produced evidence that Moran received numerous complaints from other employees regarding plaintiff's workplace demeanor which, according to defendant led Moran to report plaintiff to HRA's employee discipline unit and to tell plaintff that she might be suspended or terminated if she did not act more appropriately. If credited by the finder of fact, this explanation would support a determination that defendant was not motivated by Plaintiff's age in referring her for disciplinary proceedings and in threatening her with termination. The burden is on plaintiff to present facts showing that defendant's justification is pretex for age discrimination.

While plaintiff paints a scene of constant strife and ongoing interpersonal conflict at the Yorkville Center, she offers essentially no evidence to show that age discrimination played a roly in her employment troubles. She does not point to any statement or act at the Yorkville Center tht shows that age played a role in the decision to charge her with disciplinary violations and threaten her with termination. Isolated statements by plaintiff's subordinates concerning retirement cannot be attributed to defendant. See Kotlowski v. Eastman Kodak Co., 922 F. Supp. 790, 801 (W.D.N.Y. 1996) (stray comments by co-workers without supervisory control over plaintiff do not rebut defendant's stated nondiscriminatory reason for terminating plaintiff).

---

3 The only purpose served by the prima facie showing is to force the defendant to articulate a non-discriminatory reason for its actions. Accordingly, it often is simpler and more straightforward to move directly to the ultimate question of whether a rational fact-finder could conclude that age was a motivating factor for defendant's actions with respect to plaintiff. See Lanahan v. Mutual Life Ins. Co. of New York, F. Supp. 2d ____, _____, 1998 WL 433785, at *2 (S.D.N.Y. July 29, 1998); Lapsley v. Columbia Univ., College of Physicians and Surgeons, 999 F. Supp. 506, 514-15 S.D.N.Y. 1998). Plaintiff cannot survive summary judgment merely by creating an issue of fact as to whether defendant's justification is pretextual. Plaintiff must offer evidence from which a fact finder could infer that defendant actually was motivated at least in part by age discriminatin. Grady v. Affiliated Central, Inc., 130 F.3d 553, 561 (2d cir. 1997), pet. for cert. filed, July 20, 1998 (No. 98-5608); Fisher v. Vassar College, 114 F.3d 1332, 1346-47 (2d Cir. 1997), cert. denied, _____U.S. _____, 118 S. Ct. 851 (1998). Plaintiff has proffered no such evidence.

there is no evidence that these alleged statements were a factor in management's decision to refer plaintiff for disciplinary sanctions or to threaten her with termination if her behavior did not improve. Taken as a whole, and drawing all inferences in plaintiff's favor, plaintiff's proffered evidence in insufficient to permit a jury to find that plaintiff was charged with disciplinary violations and treatened with termination because of her age.

Even if her claim is construed as one for a hostile work environment, plaintiff cannot show that she experienced hosility because of [her] age." 29 U.S.C. 5 623 (a) (1). Assuming that plaintiff's co-workers abused her and subjected her to a hostile work enivironment, there is no evidence that age played a part in her co-worker's treatment of her. The isolated references to retirement that were allegedly made by plaintiff's subordinates do not permit a jury to conclude that plaintiff was subjected to a hostile work environment on the basis of age. Plaintiff does not allege that any of her supervisors at the Yorkville Center ever mentioned age, either hers or anyone else's. She does not contend that she ever told Moran or anyone else at the Yorkville Center that she believed that she was being harassed or discriminated against because of her a ge. Moreover, without evidence that age played a role in her treatment, there is no evidence that plaintiff's supervisors knew or should have known that anyone was hostile to plaintif because of her age. See Burlington Indus., Inc. v. Ellerth, ____, U.S. ____, ____, 118 S. Ct. 2257, 2267 (1998) (employer may be liable for harrassment by a plaintiff's co-workers "if it knew or should have known about the conduct and failed to stop it") : see also Perry v. Ethan Allen, Inc., 115 F.3d 143, 153 (2d Cir. 1997) : Murray v. New York University College of Dentistry, 57 F 3d 243, 249 (2d Cir. 1995). Accordingly, there is no basis to hold defendant liable under the ADEA for the hostility to plaintiff at the Yorkville Center.

Appendix B

CONCLUSION

For the foregoing reasons, defendant's motion for summary judgment is granted.

SO ORERED.

Dated: New York, New York
September 24, 1998

"s/_____".
MIRIAM GOLDMAN CEDARBAUM

APPENDIX C- MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW YORK FILED AUGUST 14, 1996

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW YORK

Hon. Miriam Goldman Cedarbaum

Civil Action No. 95 Civ. 10074

BLANCHE HUTCHERSON,

Plaintiff,

v.

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESAURES

Defendant.

OPINION

For, the foregoing reasons, the city's motion to dismiss the complaint is granted in part and denied in part.

IT IS THIS 14th day of August, 1996;

SO ORDERED

MIRIAM GOLDMAN CEDARBAUM U.S.D.I.

Appendix C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Blanche Hutcherson,

Plaintiff,

-against-

The City of New York, New York City Department of Human Resources,

Defendant.

MEMORANDUM. OPINION AND ORDER
95 Civ. 10074 (MGC)

APPEARANCES:

Blanche Hutcherson
Plaintiff Pro Se
341 West 24th Street
New York, New York 10011

Paul A. Crotty
Corporation Counsel of the
City of New York
Attorney for Defendant
100 Church Street
New York, New York 10007

By: James A. Girillo
Assistant Corporation Counsel

Appendix C

CEDARBAUM, J.

Blanche Hutcherson asserts claims against the City of New York. Her former employer under the Age Discrimination in Employment Act ("ADEA"), 2 U.S.C. 621-634 (1994), for discrimination and,retaliation, and under Title VII of the Civil Rights Act of 1994, 42 U.S.C. S 20OOe-17 (1994), for discrimination 'and retaliation. The City has moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b) (1) for lack of subiect matter jurisdiction because Hutcherson's claims were not included in or reasonably' related to the claims asserted in the charge she filed with the Equal Employment Opportunity Commission ("EEOC") For the reasons that follow, the Citys motion is granted in part and denied in part.

Background

Hutcherson was employed by the New York Human Resources Administration ("HRA") from April 16, 1962 through December 31, 1992. (Am.Compl.¶ 8.) On November 16,1992, Hutcherson filed a charge with-the EEOC and the New York State Division of Human Rights ("NYSDHR'), alleging that she had been discriminated against because of her age. In her EEOC charge Hutcherson alleged:

1. I am fifty-six years of age. (dob. 5/29/36)

2. I have been working with the [City] since April 16, 1962. My Present title is Supervisor. My time, attendence and work performance have always been satisfactory.

3. On October, 19, 1992" I was unjustly brought up on charges by Beverly Moran, Director, late 40's, for untrue incidents that occurred before Ms. Moran started her employ [with the City].

4. On Nobember 5, 1992 and on November 9, 1992 I wrote up two employees who were under my supervision for

insubordination and was threatened by Ms. Moran. She informed me that if another employee walks into her office to complain about me, I could lose my job and my pension or could be supended without pay.

5. On November 13, 1992, 1 was given a threatening memorandum by Ms. Moran because I wrote up two employees under my supervision for insubordination. Marie Martinez, ES III, and Mona Clark., ES III also suggested that I retire. These two individuals are all younger than I.

(EEOC Charge ¶¶ 1-5)

In an order dated June 22, 1995, the NYSDHR found that Hutcherson failed to establish that the disciplinary charges and harassment that she alleged were in any way related to her age and that Hutcherson had not suffered any damages because she retired before resolution of the disciplinary charge (NYSDHR Determination and Order.) In a letter (dated August 21, 1995, the EEOC informed Hutcherson that after reviewing the findings of the NYSDHR, it had concluded that the evidence did not establish that the city, had violated the ADEA. (EEOC Right to Sue Letter.) Hutcherson received this letter on August 23, 1995. (Am. Compl.¶12.)

Hutcherson filed a complaint with the Pro Se office of this Court on November 8, 1995. The complaint alleges that Hutcherson was denied promotions from 1981 through the time she left her employment with the City in December 1992. (Id.¶ 5,8.) Between 1987 and 1991, younger co-workers with less experience were promoted. (Id.). Attached to the complaint is a copy of Hutcherson's EEOC charge.

Hutcherson also alleges that, in June 1987, male co-worker whistled at her and another used vulgar language in her presence. In October 1987, two male co-workers held up a twenty dollar bill and told Hutcherson that she was only worth twenty dollars. In December 1987, a male co-worker tried to push-his way into the ladies' bathroom as Hutcherson was exiting. (Mem. Opp' n of 4/20/96, Exh. 10 at 3.)

Appendix C

Hutcherson contacted HRA's Office of Equal Employment Opportunity in 1987 and 1989 concerning her age and sex discrimination claims. Hutcherson alleges that she was harassed as a result. (Mem. Opp'n of 5/9/96 at 4.) The complaint alleges that in March 1989 Hutcherson was found guilty of disciplinary charges that were fabricated by a co-worker. (Am. Compl.¶ 8; Mem. Opp's of 4/20/96, Exh 12.) In 1989 and 1990 Hutcherson became sick and missed three days of work because co-workers smoked in her cubicle against her wishes. In 1991, a co-worker, stuck an eight-inch knife into the files on her desk. In 1992, the majority of employees in Hutcherson's department were allowed to take off Good Friday, while Hutcherson was not permitted to do so. (Am Comp¶.1 8.) The complaint also alleges that Hutcherson's co-workers threatened to beat her up, opened her personal-mail and rummaged through her desk. (Id.)

Discussion

Because Hutcherson proceeds pro se, her complaint and supporting papers must be read liberally and interpreted to raise the strongest arguments that they suggest. Seto v. Walker, 44 F.3d 169, 173 (2d Cir. 1995); see also Haines v. Kerner, 404 U.S.519, 520, 30 L. Ed. 2d 652,654 (1972) (per curiam) (pro se complaints held to less stringent standards than pleadings drafted by lawyers).

A district court only has jurisdiction to hear Title VII and ADEA claims that either are included in an EEOC charge or are based on conduct subsequent to the EEOC charge which is "reasonably related" to that alleged in the EEOC charge. Butts v. City of New York Dep't of Housing Preservation and Dev. 990F.2d 1397, 1401 (2d C-4 "Cir. 1993 Title VII; Miller v. International Tel. and Tel. Corp. 755 F. 2d 20, 23-24 (2nd Cir); cert. denied, 474 U.S. 851, 88 L. Ed. 2d 122 (1985) (ADEA). "The purpose of the notice provision, which is to encourage settlement of discrimination disputes, through conciliation and voluntary compliance, would be defeated if a complainant could litigate a claim not previously presented to and investigate by the EEOC Miller, 755 F.2d at 26. Claims not raised in an EEOC charge maybe

brought in a civil action where the conduct complained of would fall within the scope of the EEOC investigation which can reasonably be expected to grow out of the charge of discrimination. Butts, 990 F.2d at 1402; Miller, 755 F.2d at 23- 24.

In her EE0C charge, Hutcherson alleges that in October and November 1992 she was unjustly brought up on charges, threatened with termination, and told she should retire. Because Hutcherson proceeds pro se and because the EEOC charge was attached to the complaint, these allegations are assumed to be included in the complaint. Hutcherson also submitted further documentation regarding these allegations to this motion. (Mem.Opp's of 4/20/96, Exh. 13-14.) 'There is subject matter jurisdiction over Hutcherson's age discrimination claim in as much as it is based on the conduct alleged in her EEOC charge.

However, there is nothing in Hutcherson's EEOC charge concerning, her promotion, sex discrimination or retaliation claims, all of which are based on conduct that allegedly occurrecd before Hutcherson file her EEOC charge. Nor would Hutcherson's promotion claim for the post November 1992 period fall within the scope of the EEOC investigation which could reasonably be expected to have grown out of her age discrimination charges.Therefore, these claims are dismissed for lack of subject matter jurisdiction.

Conclusion

For the foregoing reasons, the City's motion to dismiss the complaint, is granted in part and denied in part.

SO ORDERED

Dated: New York, New York
August 14, 1996

"s/_____".
MIRIAM GOLDMAN CEDARBAUM
United States District Judge

(2)

Supreme Court, U.S.
FILED

99 383 JUL 06 1999

In The OFFICE OF THE CLERK

SUPREME COURT OF THE UNITED STATES

BLANCHE HUTCHERSON,

Petitioner,

vs.

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUAN RESOURCES,

Respondent,

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

---

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

BLANCHE HUTCHERSON, PRO SE
341 West 24th Street Apt. 4H
New York, New York 10011-1528
(212) 691-4210

1648

TABLE OF CONTENTS

	page
AGENCY'S ACTING CORPORATION COUNSEL OF THE CITY OF NEW YORK	1
AGENCY'S CORPORATION COUNSEL OF THE CITY OF NEW YORK	17-23
AGENCY'S CORPORATION COUNSEL OF THE CITY OF NEW YORK	24-34
AGENCY'S CORPORATION COUNSEL OF THE CITY OF NEW YORK	35-50
PETITIONER'S AMENDED COMPLAINT	51-70
PETITIONER'S CASE INFORMATION	72
WITNESSED KNIFE ATTACK ON PETITIONER	77-79
HARASSMENT FROM PETITIONER'S IMMEDIATE SUPERVISOR	79-81
INAPPROPROPRIATE CONDUCT OF PETITIONER'S IMMEDIATE SUPERVISOR	81-83
PETITIONER'S MEMORANDUM TO BARBARA J. SABOL, COMISSIONER	84-85
MEMORANDUM TO PATRICIA SMITH, ACTING DEPUTY COMMISSIONER	86-88
EMPMLOYMENT LAW DIVISION MEMORANDUM TO B. MORAN	89-97
PETITIONER'S REPLY TO DISCIPLINARY CHARGES IN 1992	98-107
LORRAINE M. DARDEN'S MEMORANDUM TO THE SUPREME COURT OF THE STATE OF NEW YORK	109
S. BROWN'S MEMORANDUM TO THE UNITED STATES DISTRICT COURT	110-122

CONTENTS

	page
R. ROSENBERG'S MEMORANDUM IN PETITIONER'S PERSONNEL FOLDER.	113-118
PETITIONER'S MEMORADUM TO JUDITH BEREK, PERSONAL SERVICES.	118-122
ALLEN KRAUS, DEPUTY COMMISSIONER'S COMMENDATION TO PETITIONER. . . .	123
D. SMITH'S COMMENDATION MEMORADUM TO DIRECTOR	124-125
RICHARD O'BRIEN'S COMMENDATION TO PETITIONER.	125-126
S. HOLTZ'S COMMENDATION ON PETITIONER'S WORK PERFORMANCE	126-127
EEO'S MEMORANDUM TO THE DIRECTOR OF THE WAVERLY CENTRER APRIL, 1989	128-132
DISCIPLINARY CHARGES AGAINST PETITIONER. AUGUST, 1989	132-147
EEO'S MEMORANDUM TO THE WAVERLY CENTER DECEMBER, 1987	148-162

Index No. 95 Civ. 10074 (MGC)

UNITED STATES DISTRICT COURT
SOUTHERN DISRTICT OF NEW YORK

BLANCHE HUTHERSON,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES,

Defendants,

REPY MEMORANDUM OF LAW FURTHER SUPPORT OF DEFENDANT CITY OF NEW YORK'S MOTION FOR SUMMARY JUDGEMENT

JEFFREY D. FRIEDLANDER
Acting Corporation Counsel of the City of New York

Attorney for THE CITY
100 Church Street, Rm. 2-155
New York, NY 10007

Of Counsel: James A. Girillo
Tel: (212) 788-0867
NYCLIS No. (TEXT)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -

BLANCHE HUTHERSON

Plaintiff,

-against- 95 CIV. 10074 (MGC)

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES

- -

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF DEFENDANT CITY OF NEW YORKS MOTION FOR SUMMARY JUDGMENT

Preliminary Statement

Defendant, City of New York, submits this memorandum of law in futher support of its motion for summary judgment in this action While plaintiff's prolix opposition papers[1] seek to relitigate her many time-barred or otherwise defective claims (see the Courts August 14, 1996 Memorandum Opinion and Order dismissing these claims), plaintiff is unable to create a material issue of fact with respect to the sole issue that remains in this case: whether Beverly Moran, Yorkville's Director, brought plaintiff up on charges in the fall of 1992, threatened plaintiff with termination and told plaintiff to retire because of her age.

---

1 Plaintiff's opposition to this motion consists of several unsworn documents titled "Plaintiff Disputes Statement by Defendant".

Since plaintiff has been (apparently countering defendant's Rule 56.1 Statement); a document titled "Opposition to Motion"; Mr. Hassan Abdul-Hamid's deposition transcript and 19 pages of corrections; plaintiffs 17 pages of corrections to her deposition and a number of exhibits. Unable to offer evidence in support of this claim beyond her own mere speculation and belief, summary judgment should be accorded to the City.

As discussed below, while plaintiff alleges that Ms. Moran (who is two or at most three years younger than plaintiff) had a negative attitude toward plaintiff, she has failed to offer any evidence that Moran's actions were motivated by age. Also plaintiff's only witness, Hassan Abdul-Hamid, who plaintiff deposed on March 26, 1997 with a court reporter she retained, conceded that plaintiff's age was not the reason behind defendants actions toward plaintiff and that Yorkville employed people in their 70s. Finally, it bears repeating that Ms. Moran did not ask that plaintiff be suspended or terminated, or ask her to retire, that the only penalty plaintiff was assessed after an October 1992 disciplinary conference was five days loss of pay and plaintiff, who retired that year was never required to forfeit this money. Accordingly, plaintiff had failed to offer evidence sufficient to defeat this motion

ARGUMENT

A PLAINTIFF HAS FAILED TO OFFER EVIDENCE DEMONSTRATING THAT BEVERLY MORAN REFERRED PLAINTIFF FOR DISCIPLINARY CHARGES BECAUSE OF HER AGE

Plaintiff cannot dispute that Ms. Moran was very close to her own age, at most two or three years younger, (see Def's 56.1 statement at ¶¶ 1-2 Pl's opp. st. at ¶ 1) or that in the spring of 1992 Ms. Moran

Yorkville's Director, received numerous written and oral complaints from plaintiffs supervisees and supervisors about plaintiffs conduct toward them. See Defs 56.1 statement at ¶¶ 8-11. It is also undisputed that prior to sending the disciplinary packet to HRA's employee discipline unit, Ms. Moran received a memorandum and supporting documentation from Lorraine Darden, Yorkville's office manager, recommending such action Id. at ¶¶ 12-13; Exhibit G[2].

While plaintiff disputes the veracity of the many oral and written complaints Ms. Moran received regarding plaintiff, she does not deny that Ms. Moran received many complaints about her from a variety of sources. Thus, Ms. Moran in referring the matter to HRA's employee discipline unit, without making any recommendation as to a proposed penalty, had a valid, non-discriminatory reason for such action. See Exh. M. Plaintiff, moreover, has failed to offer any direct evidence (such as statement or conduct by Moran) that Ms. Moran forwarded this packet and recommendation because of plaintiff's age.

Plaintiff has also failed to offer indirect evidence of age discrimination. For example, while plaintiff alleges she was singled out for discipline by Ms. Moran, she has failed to identify any younger first level supervisor[3] at Yorkville that was the subject of so many complaints (by both her supervisees and supervisors) and was not referred for disciplinary action. Further her own witness, Mr. Abdu-Hamid, conceded under oath that the reason for defendant's actions toward plaintiff was something other than her age. See Abdul-Hamid Dep. Trans. at p. 49, L. 13-25, p.50, L2-4. In short, other than her own speculation and opinion plaintiff has failed to offer "concrete particulars' to substantiate [her] claim". Hunt v. Tektronix Inc., 952 F. Supp. 998, 1002 (W.D.N.Y. 1997), citing, Meri v. Bacon, 759 F2d 989 (2d Cir.), cert. denied, 474 U.S. 829, 106, S. Ct. 91 (1985).

Plaintiff also alleges in conclusory fashion that her supervisees whom she characters as trouble makers were not counseled or

---

2 Unless indicated to the contrary, all exhibits referred to herein are annexed to the City's motion papers.

3 Plaintiff was a Principal Adminstrative Assistant ("PAAI") at Yorkville with supervisory responsiblity for approximately five workers.

disciplined by Ms. Moran. The evidence in the record demonstrates to the contrary. Plaintiff concedes that in November 1992, both she and a number of her supervisees received a memorandum from Ms. Moran citing to a counseling session they had with Ms. Moran regarding their conduct. See Def's 56.1 St. at ¶¶28-30: Exh I (Moran's November 1992 memoranda) Moran Declar. (Exh M) and PL's oppos. at p. 22. ("Ms. Moran wrote to the 5 supervissees in plaintiff's unit but failed to sign the memo." Plaintiff, moreover, does not dispute Ms. Moran's testimony that plaintiff did not complain to her about plaintiff's supervisees until these supervisees complained about plaintiffs conduct. See Def's 56.1 St. at ¶32 and Exh M at ¶14[4]; P1's counter 56.1 St. as p. 9, ¶26.

Accordingly, at most, what plaintiff alleges is that she had a bad working relationship with her supervisees, who were troublemakers, that she also did not get along with her immediate supervisors, and that in forwarding a request for disciplinary action against plaintiff, Ms. Moran relied too heavily on the many complaints she received about plaintiff. This hardly amounts to a triable age discrimination claim.

B PLAINTIFF HAS FAILED TO OFFER ANYTHING BUT SPECULATION TO SUPPORT HER CLAIM THAT JAMES PYATT CAUSED HER TO BE DISCIPLINED IN 1992 BECAUSE OF HER AGE

Plaintiff's claim that James Pyatt caused her to receive disciplinary charges or to retire is entitled to short shift. It is undisputed that in 1992, James Pyatt now retired was an Assistant Deputy Commissioner at HRA with oversight of 40 Income Support Centers like Yorkville and no responsibility for the day to day supervision / management of staff at each center. Def's 56.1 St. at ¶¶ 3-4. Mr. Pyatt, who is at least 55 years old, testified at his deposition that in 1992, he

4 While plaintiff alleges that she complained to Lorraine Darden about one supervisee (See P1's dep. trans Exh A at p. 135), plaintiff never alleges that she brought such complaints to Ms. Moran prior to Ms. Moran referring plaintiff for disciplinary action.

did not know, much less order or recommend to Ms. Moran or anyone else, that plaintiff be suspended or served with disciplinary charges. Id. at ¶ 6: Exh D at pp. 39, 40-41, 42. Further, Ms. Moran also testified that she and Mr. Pyatt never discussed staff members at Yorkville, did not discuss plaintiff and definitely did not discuss disciplining plaintiff. Exh M at ¶ 3.

Plaintiff offers no evidence to dispute this testimony. At most, she alleges that Pyatt was in Yorkville Center frequently and had several meetings with the adminsitrative staff. Beyond that, plaintiff merely speculates without any evidentiary support, that these meetings were about her. Plaintiff also speculates in conclusory fashion, that Mr. Pyatt "probably had knowledge about the City's retirement package in the summer of 1992" and, that presemably, he wanted plaintiff to take it[5]. PL's opps. at p. 23. Of course, plaintiff never even alleges that Pyatt spoke with her, or anyone else in 1992, about retiring. These conclusory and unsupported theories, which are belied by actual testimony, are insufficient to create an inference of age discrimination.

C THE COURT HAS NOT PERMITTED PLAINTIFF TO MAINTAIN NOR HAS SHE ALLEGED FACTS SUFFICIENT TO SUPPORT A HOSTILE WORK ENVIRONMENT CLAIM AGAINST MS. MORAN

Although plaintiff's only claim here is that Ms. Moran subjected her to disparate treatment and punishment in 1992 (by bringing plaintiff up on charges, allegedly threatening her with termination and allegedly telling her to retire) because of her age, plaintiff also seeks to cast this as a hostile or abusive work environment claim. See, eg. P1's oppos. at pp. 21, 22, 24.

---

5 Of course, plaintiff also repeats at length many of her claims and theories about HRA, James Pyatt and other HRA employees which date back to the middle 1980s and which dismissed by this Court. Significantly, while plaintiff accuses subordinates such as Maria Martinez of telling her to retire, she does not allege that Pyatt or Moran ever did so.

To even state such a claim the conduct complained of must be severe and pervasive or the claim must fail. Meritor Savings Bank v. Vinson, 477 U.S. 57, 67, S. Ct. 2399, 2405 (1986); Cosgrove v. Sears, Roebuck & Co., 9 F. 3d 1033, 1041-42 (2d Cir 1993).

The factors to be considered in assessing such a claim may include "frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonable interferes with an employees work performance." Harris v. Forklift Systems Inc., 114 S. Ct. 367. 371 (1993), quoting, Meritor, 477 U.S. 57, 67. A hostile working environment is shown when the incidents of harassment occur either in concert or with a regularity that can reasonably be termed pervasive. Cosgrove, 9 F. 3d at 1041-42; Lopez v. S.B. Thomas Inc., 831 F. 2d 1184, 1189 (2d Cir 1987); Snell v. Sufflolk County, 782 F. 2d 1094,1103 (2d Cir. 1986). Stated somewhat differently, the incidents must be repeated and continuous. Kotcher v. Rosa and Sullivan Appliance Center, Inc., 957 F. 2d 59, 62 Cir. 1992.

In the present case plaintiff's allegations that Ms. Moran brought her up on charges in the Fall of 1992 and then, on one or two occasions, spoke with her about her conduct and threatened her with possible termination, would hardly rise to the level necessary to state, much less try, a hostile work environment claim. Further all such claims were previously dismissed by the Court.

D PLAINTIFF AND HER WITNESS HAVE EXTENSIVELY AND IMPROPERLY ALTERED THEIR DEPOSITION TESTIMONY IN AN EFFORT TO AVOID DISMISAL OF THIS CASE

To avoid summary judgment, plaintiff and her witness, Hassan Abdul-Hamid, have altered extensive portions of their deposition testimony. These changes are not corrections to typographical errors made in the transcription of plaintiff's or Mr. Abdul-Hamid's testimony. Rather, they are substantive in nature and involve the deletion of words and sentences and the addition of words and whole sentences, calculated to change the nature of plaintiff's and Mr. Abdul-Hamid's testimony. Such changes, moreover, are in addition to the many substantive alterations and changes each deponent made throughout the body of their deposition transcript.

F.R.C.P. 30(c) requires a deponent making substantive changes to her deposition testimony to provide a signed statement explaining the reasons for making such changes. Hlinko v. Virgin Atlantic Airways, 1997 U.S. Dist. LEXIS 162 at *3 (S.D.N.Y. 1997). (Copy attached.) Even where an explanation for such alteration is provided, however, the "plaintiff is not entitled to have his altered answers take the place of the original ones. His original deposition answers constitute the admissions of party, and as such form part of the record evidence." Podell v. Citicorp, 914 F. Suppl. 1025, 1034 (S.D.N.Y. 1996), aff'd, 112 F. 3d 98 (2d Cir 1997).

Here, plaintiff and Mr. Abdul-Hamid made substantive and unexplained changes to their deposition testimony shortly before defendant moved for summary judgment. While such changes are not sufficient to create material issues of fact for trial, they should be completely discregarded by the Court in considering the motion, since they are totally disingenuous and incredible[6].

In essence, plaintiff is attempting to contradict her own testimony, much like parties opposing summary judgment who submit affidavits to contradict or modify their earlier deposition testimony. This practice has repeatedly been barred in this circuit.

---

6 Plaintiff has 17 pages of changes to her deposition transcript, and Mr. Abdul-Hamid has 19 pages of changes (?:) Such changes are in addition to the many changes each deponent made throughout the body of the deposition transcript.

See e.g. Mack v. U.S., 814 F. 2d 120, 124 (2d Cir. 1987), citing Miller v. International Telephone & Telegraph Corp., 755 F. 2d 20, 24 (2d Cir.), cert. denied, 474 U.S. 851, 106 S. Ct. 148, (1985); Reisner v. General Motors Corp., 671 F. 2d 91, 93 (2d Cir.), cert. denied, 459 U.S. 858, 103 S. Ct. 130 (1982). Accordingly, plaintiff's last minute unsupported and disingenuous attempts to change the record in this case to avoid summary judgment should be disregarded in all respects.

While a plaintiff's effort to unfairly alter the record might normally be overlooked to some degree because of her pro se status, plaintiff's conduct in this case is particularly egregious and warrants no such latitude. Although it is undisputed that plaintiff secured her own court reporter and took the depositions of 11 present or former City employees, including that of Mr. Abdul-Hamid, then sent defendant's counsel these transcripts, she had the temerity to allege that the City, or its counsel, not only somehow altered the deposition testimony of these witnesses, but also the questions she asked and her court reporter transcribed. See eg. PL's Counter 56.1 statement at p. 13. ¶ 36; PL's oppos. at p. 6[7]. Such unacceptable conduct not only calls into question the veracity of plaintiff's opposition papers but undermines her credibility generally.

---

7 Plaintiff also claims quite, erroneously, that the submission of a declaration in support of this motion by Beverly Moran (Exh. M) who plaintiff also deposed during discovery in this case, was improper.
See eg F.R.C.P 56(b)

CONCLUSION

For all the foregoing reasons, and those cited in defendant's November 5, 1997 motion papers and supporting memorandum of law, defendant is entitled to an order granting summary judgment in its favor.

Dated: New York, New York
December 17, 1997

JEFFREY D FRIEDLANDER
Acting Corporation Counsel
of the City of New York
Attorney for Defendant
100 Church Street, Room 2-155
New York, New York 10007
(212) 788-0867

By "s/_____".
JAMES A. GIRILLO
Assistant Corporation
Counsel

1ST CASE of Level I printed in FULL format.

ELIZABETH HILINKO, Plaintiff, -against- VIRGIN ATLANTIC AIRWAYS, RICHARD BRANSON and DAVID TAIT, JOINTLY, SERVERALLY and in the ALTERNATIVE, Defendants.

96 Civ. 2873 (KMW) (THK)

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

1997 U.S. Dist. LEXIS 1627

February 18, 1997, Decided

February 19, 1997, FILED

COUNSEL; [*1] for ELIZABETH HELINKO, plaintiff: Gary Edward Ireland, Gary E. Ireland, New York

For VIRGIN ATLANTIC AIRWAYS, defendant: John W. Ohlweiler, Simpson Thacher & Bartlett, New York, NY, J. Scott Dryer, Simpson Thacher & Bartlett, New York, NY. For RICHARD BRANSON, defendant: John W. Ohlweiler, (See above) J. Scott Dryer, (See above). For DAVID TAIT, JOINTLY, SEVERALLY and in the ALTERNATIVE, defendant: John W. Ohlweiler, (See above), J. Scott Dryer, (See above).

JUDGES: THEODORE H. KATZ, UNITED STATES MAGISTRATE JUDGE.

OPINION BY: THEODORE H. KATZ

OPINION: MEMORANDUM AND ORDER

THEODORE H. KATZ, UNITED STATES MAGISTRATE JUDGE

This action alleging; inter alia discrimination on the basis of gender in violation of Title VII of the Civil Rights Act of 1964, *42 U.S.C. 2000e,* was referred to me for general pretrial supervision and the resolution of disposition motions. The parties have written to me concerning disputes that have arisen in connection with plaintiff's failure to sign and return the transcripts of her deposition in accordance with Rule 30(e) of the Federal Rules of Civil Procedure and plaintiff's deposition of an-out-of state witness. Defendant objects to the [*2] changes plaintiff has made to her deposition on the grounds that they are untimely and otherwise not in compliance with Rule 30(e) of the Federal Rules of Civil Procedure and because they substantially alter her responses to certain questions. Defendant requests that certain of the changes, which were submitted after the discovery deadline, be stricken as improper attempts to forestall further questions regarding those changes. Defendant also requests, with respect to the changes made to the December 26th transcript, that plaintiff's deposition be reopened to permit further questioning about the amended answers.

Defendant's object to plaintiff's proposed telephonic deposition of Marissa D'anna, a nonparty, out-of-state witness. Defendants claim that the subpoena, purportedly issued to Ms. D'Anna, does not comply with the requirements of Rule 45 of the Federal Rules of Civil Procedure and that it was issued in violation of this Court's directive.

I THE DEPOSITION TRANSCRIPTS

Rule 30 (e) permits a witness upon her request or that of a party to the litigation, to review the transcript of her deposition and to make changes "in form or in substance" within thrity days [*3] of notification by the court reporter that the transcript is ready for review. See Fed. R. Civ. P. 30(e). Whenever such changes are made, the deponent is required to sign a statement setting forth the reason for each change. Id. Courts

generally construe Rule 30(e) broadly, to permit any changes to the deposition, even those having the effect of contradicting the original answers, regardless of how unconvincing the deponents explanation for making the changes might be. *See eg. Podell v. Citicorp Diners Club, Inc., 914 F. Supp. 1025, 1034, (S.D.N.Y. 1996) Lugtig v. Thomas, 89 F.R.D. 639, 641 (N.D. III. 1981); Panzier v. Wolf , No. 79 Civ. 3445 (CBM), 1980 WL 1366, at *2 (S.D.N.Y. Jan. 17, 1980).* The deponent however, may not delete the original answers, since both the original and the changes are admissible at trial. *Allen & Co. v. Occidental Petroleum Corp., 49 F.R.D. 337, 340 (S.D. N.Y. 1970) (citing Usiak v. New York Tank Barge Co. 299 F.2d 808 (2d Cir. 1962).*

Athough Rule 30(e) "does not require a judge to examine the sufficiency, reasonableness, or legitimacy of the reasons for the changes," Podell, 914 F. Supp. at 1034 (citation omitted), [*4] a court may nevertheless reopen a deposition to allow for further cross examination of the deponent if the changes to the transcript are so substantial as to effectively render it "incomplete or useless without further testimony." Allen & Co. 49 F. R.D. at 341: accord Lugtig 89 F.R.D. at 642. Having reviewed the changes plaintiff has made to the September 24th, October 31st and December 26th transcipts of her depositions, the Court finds that they do not comply with Rule 30(e) because plaintiff has failed, in large part to provide adequate explanations for making the changes. Moreover the changes are so substantial in nature that they warrant reopening plaintiff's deposition for cross-examination on the substance of the changes as well as plaintiff's reasons for making them.

Accordingly, defendants shall be permitted to reopen and complete plaintiff's deposition by February 28, 1997. nl As of February 11, 1997, plaintiff had yet to return to defendants counsel the signed transcript of her September 12th deposition. (See letter from Tonianne Florentino to the Court, dated February 11, 1997.) She has therefore

waived her right to make corrections to this transcript pursuant to Rule 32 (d)(4) of the Federal Rules of Civil Procedure. Although the parties disagree with respect to whether plaintiff has failed to sign and return the other transcripts in a timely fashion, the Court will not address this issue given the fact that the parties did agree amongst themselves to certain extensions of the 30-day signing period (see letter from Tonianne Florentino to the Court dated February 11, 1997. letter from Gary E. Ireland to the Court dated February 13, 1997). Given the fact that the Court has ordered that defendant's may reopen plaintiff's deposition to cross-examine her on the changes to these transcripts.
[*5]

II THE DEPOSITION SUBPOENA OF MARRISSA D'ANNA

On February 3, 1997 the Court held a discovery conference to resolve numerous outstanding discovery issues. During the course of that conference, plaintiffs counsel informed the Court that he intended to subpoena an out-of-state witness, Marissa D'Anna, for a deposition. Ms. D'Anna allegedly filed a sexual harassment complaint against some of the defendants in this case, and the parties later settled the dispute According to plaintiff's counsel, Ms. D'Anna could not submit to a deposition without being subpoenaed due to a confidentiality stipulation in the settlement agreement, but she was willing to be deposed and would not object to a subpoena. Although plaintiff's counsel was aware of Ms. D'Anna's identity at least as early as January 13, 1997, when defendants produced a copy of her complaint in response to a document request in this litigation, and he had not sought her deposition, the Court nevertheless agreed to permit him to depose Ms. D'Anna by telephone with defense counsel present if he could subpoena her and complete the deposition by February 17, 1997, the discovery deadline previously imposed by the Court. [*6] n2

n2 There had been other earlier discovery deadlines that were subsequently extended.

On February 10, 1997, defendants counsel received via regular mail, a deposition subpoena for Ms. D'Anna, noticing her telephone deposition for the previous day, Sunday, February 9th. Defendants counsel objected to the fact that timely notice of the deposition had not been provided, that the deposition had been scheduled for a Sunday; and to the form of the subpoena. Plaintiff's counsel thereafter sent defendants counsel another subpoena, with technical problems purportedly corrected (see letter from Gary E. Ireland to the Court, dated February 13, 1997) noticing the deposition for February 17, 1997, which was Presidents Day, a national holiday. Defendants counsel informed the Court that she had not been notified in advance of the proposed date of the telephone deposition, and was unavailable to participate. (see letter from Tonianne Florentino to the Court dated February 14, 1997.)

Although plaintiff's counsel [*7] insists that he has complied with this Court's order with respect to the proposed deposition of Ms. D'Anna, the Court finds that his subpoena is untimely. Plaintiff's counsel failed to confer with defendants' counsel with respect to a mutually agreeable time for the telephone deposition, thereby instigating the voluminous correspondence to the Court on this matter;

1997 US DIST LEXIS 1627 *7

moreover, he scheduled the deposition to take place first on a Sunday and then on a national holiday. Notwithstanding his recollection to the contrary, the Court's notes of the February 3rd conference clearly reflect its specific instruction that the deposition could only take place if it could be completed by February 11th. n3 Therefore, plaintiffs counsel is precluded from pursuing further discovery with respect to

Ms. D'Anna.

n3 Defense counsel has also identified various defects in each of the subpoenas issued to Ms. D'Anna. Although her arguments appear to have merit. Inasmuch as these defects, other than the time of the deposition, would only impact the deponent, Ms. D'Anna, and the Court is able to resolve this motion on other grounds, I need not address these other issues.

[*8]

SO ORDERED.

Dated: February 18, 1997
New York, New York
Theodore H. Katz
United States Magistrate Judge

95 Civ 10074 (MGC)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BLANCHE HUTCHERSON,

Plaintiff,

-against-

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES

Defendant.

DEFENDANTS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO FED. RULE CIV. PRO. 12(b) (6)

PAUL A CROTTY
Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street
New York NY 10007

Of Counsel James A Girillo
Tel: (212) 788-0867
NYCLIS No.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -

BLANCHE HUTHERSON,

Plaintiff,

-against- 95 Civ. 10074 (MGC)

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES,

Defendant.

- -

DEFENDANTS' REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF THEIR MOTION TO DISMISS PURSUANT TO FED RULE CIV. PRO. 12(b)(6)

Preliminary Statement

Defendants submit this reply memorandum of law in further support of their motion to dismiss the amended complaint in this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Although she has attached and made reference to numerous documents in her affirmation in opposition to this motion, plaintiff still fails to allege a legally viable claim in this action.

To begin with, the amended complaint must be dismisssed with prejudice, as against Chuck Waxman, since plaintiff concedes that she did not bring, nor intend to bring, this action against Chuck Waxman. Next, because the plaintiff's EEOC charge fails to allege any promotion claims, this Court lacks jurisdiction to consider, and must dismiss, all of the ADEA promotion claims alleged in plaintiff's complaint and attachments.

Plaintiff's ADEA claims are all also grossly untimely. For example, the most recent promotion claim cited anywhere in the amended complaint or affirmation in opposition, and attachments is April 16, 1991 - when plaintiff contends Sally Rodriguez was promoted to PAA II (presumable over Plaintiff). This is well outside the 300-day limitations period for bringing this claim to the EEOC. This claim also accrued more than three years before plaintiff commenced this action in November 1995. Thus, plaintiff's promotion claims are barred by even the longest possible limitations period available (when intentional age discrimination is alleged) for commencing suit under ADEA.

The attachments to plaintiff's affirmation in opposition serve one purpose: they reveal plaintiff's lack of diligence in presenting her promotion, and other claims, to the EEOC. As evidenced by the documents she attaches, plaintiff's claims accrued in the mid-to late-1980s, yet she waited until November 16, 1992 before bringing such claims before the EEOC. Finally, plaintiff has failed to allege any additional facts that would support a claim against HRA pursuant to 42 U.S.C. 1981 or 1983, and such claims are also time-barred.

Accordingly, because the amended complaint and attachments, and the affirmation in opposition and attachments, fail to state a claim upon which relief can be granted, the amended complaint should be dismissed in its entirety.

5/7/96 7:50 pm Witt 310N

ARGUMENT

A. Plaintiff Acknowledged That She Did Not Sue Chuck Waxman

Plaintiff concedes that she has not sued Chick Waxman and does not intend to sue him. Therefore, the amended complaint should be dismissed as against him with prejudice. The amended complaint moreover should be dismissed for the reasons set forth in point III of defendants' April 15, 1996 memorandum of law in support of this motion ("defendants' prior brief").

B. This Court Lacks Jurisdiction To Consider, And Must Dismiss, All of Plaintiff's Promotion Claims

It is beyond dispute that the district court only had jurisdiction to hear discrimination claims which were included in an EEOC charge. Butts v. NYC DEPT. of Housing Preservation and Development, 990 F. 2d 1397, 1401 (2d Cir. 1993); Miller v. International Tel. & Tel., 735 F. 2d 20, 26 (2d Cir.), cert. denied 474 U.S. 851 (1985). As discussed more fully indefendants' prior brief, this Court cannot consider any of plaintiff's promotion claims because by failing to raise these claims in her November 16, 1992 EEOC charge, she prevented the EEOC and State Division of Human Rights from serving its statutory function of investigating and meditating such claims. See Butts, 990 F. 2d 1397 at 1401; Miller, 755 F. 2d 20 at 26; Steward v. United States Immigration and Naturalization Service, 762 F.2d 193, 198 (2d Cir. 1985).

Plaintiff's failure to raise these promotion claims in her EEOC charge, moreover, cannot be excused. She alleges herself that such claims accrued years earlier and were apparently complained about by plaintiff to HRA's own equal employment opportunity office in 1987

and 1989. See e.g. plaintiff's affirmation in opposition at p. 4¶ p.3 p.¶2; Exhibit "11" to plaintiff's affirmation in opposition at p.3, ¶4.

C. Plaintiff Has Failed To Allege That Any Of Her Claims Are Timely

Plaintiff does not dispute that the claims alleged in her amended complaint including all her promotion claims, were raised well more than 300 days before she filed her November 16, 1992 EEOC charge. Plaintiff also fails to rebut defendant's contention that these claims all accrued more than three years before plaintiff commenced this action[1].

In employment discrimination cases, the Second Circuit has held that "in the absence of a recognized equitable consideration, the Court cannot extend the limitations period by even one day". Johnson v. Al Tech Specialities Steel Corp., 731 F. 2d 143, 146 (2d Cir. 1984) (emphasis supplied). This is true even when plaintiff is proceeding pro se. Baldwin v. County Welcome Center v. Brown, 466 U.S. 147, 151 (1984) (only allegations that plaintiff filed, albeit defectively, within the statutory period, or that plaintiff was induced or tricked by an adversary to let a deadline pass, may suffice to toll a limitations period). Here, plaintiff does not allege that her failure to timely bring her claims to the EEOC was occasioned by misstatements made to her by defendants or the EEOC. Indeed, plaintiff alleges in her amended complaint and various attachments that, as far back as 1987 she knew HRA was not crediting her allegations. See e.g. plaintiffs affirmation in opposition at p. 3, ¶2. Therefore, at best, plaintiff's failure to bring an ADEA charge of discrimination until November 16, 1992 or to commence this action until November 1995, can be characterized as excusable neglect. However, [p] principals of equitable tolling... do nor extend to what is best a garden variety claim of excusable neglect. " Irwin v. Veterans Admin., 498 U.S. 89, 96, 111S. Ct. 453, 458 (1990). See Baldwin, 466 U.S. 147, 151 ("one who fails to act didligently cannot invoke equitable principals to excuse that lack of diligence."). Consequently, all of the ADEA claims alleged in the amended complaint are time-barred and must be dismissed.

D **PLAINTIFF HAS PROVIDED THIS COURT WITH NO BASIS FOR PERMITTING HER TO PURSUIT CLAIMS PURSUANT TO 42 U.S.C .SECTIONS 1981 AND 1983**

Plaintiff also fails to state a claim under 42 U.S.C. 1981 and 1983. As discussed in Point I, subsection C (page 7) of defendants' prior brief, in New York there is a three-year limitations period governing actions pursuant to these statutes. Thus plaintiff's 1981 and 1983 claims are also time-barred.

The amended complaint, moreover, also fails to state a claim pursuant to these statues. Although the amended complaint neither alleges that plaintiff is pursuing claims pursuant to section 1981 or section 1983, nor alleges facts in support of such claims, defendants liberally construed the language at page three, paragraph one of the pro se form complaint which states that "Jurisdiction may also be appropriate under 1981 and 1983", and addressed this issue. Now, in her affirmation in opposition, at page 5, ¶ 2, plaintiff alleges for the first time that her mistreatment "was pursuant to a custom, policy and practice of HRA," However, since plaintiff fails to identify this alleged policy or practice, much less the other elements of a Section 1983 claim, this claim is also defective as a matter of law. See Monell v. New York City Department of Social Services, 436 U.S. 658, 690 (1978) Delaware State College v. Ricks, 449 U.S. 250, 257 (1989)

---

1 This longer, three year limitations period for commencing and ADEA suit would only apply if plaintiff establishes that the alleged violations were willful. Otherwise, only two year limitations period would apply. See Russo v. Trifari Krussman & Fishel, Inc., 837F 2nd 40, 43 (2d Cir, 1988); 28 U.S.C. 255 equitable tolling... do not extend to what is at best garden variety claim of excusable neglect." Irwin v. Veterans Admin., 498 U.S. 89, 96, 111 S. Ct. 453 (1990). See Baldwin, 466 U.S. 147, 151 ("one who faikls to act diligentl cannot invoke equitable principals to excuse that lack of diligence."). Consequently, all of the ADEA claims alleged in the amendment complaint are time-barred andmust be dismissed.

Finally, as defendants discussed in Point I, subparagraph C of their prior brief, plaintiff brings this action for age discrimination. Because ADEA is the exclusive federal statutory basis for such a claim she cannot maintain this action pursuant to 42 U.S.C. 1981 and 1983.

CONCLUSION

For the foregoing reasons, and those set forth in defendants' April 15, 1996 memorandum of law, the defendants' respectfully request that the amended complaint be dismissed in its entirety with prejudice, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
May 7, 1996

PAUL A. CROTTY
Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street, Room 2-124
New York, New York 10007
(212) 788-0867

By: "s/_____
JAMES A. GIRILLO (JD 1506)
Assistant Corporation Counse

5/7/96 7:50pm Witt 310-N

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

BLANCHE HUTCHERSON,

Plaintiff,

95 Civ 10074 (MGC)

THE CITY OF NEW YORK, NEW YORK CITY
DEPARTMENT OF HUMAN RESOURCES

Defendant.

- x

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS MOTION TO DISMISS

Preliminary Statement

Based on conduct which allegedly occurred between 1987 and April 1991, plaintiff brings this action pursuant to the Age Discrimination in Employment Act ("ADEA"); 29 U.S.C. 621-634 against the New York City Human Resources Administration ("HRA") and possibly against Chuck Waxman, an employee of HRA. Plaintiff may also bring this action pursuant to 42 U.S.C. 1981 and 1983[2].

---

1 Chuck Waxman accepted on behalf of HRA, a summons addressed to him as "Personnel Director NY City Dept. of Human Resources". This summons, and an accompanying amended complaint which does not name Waxman as a defendant were mailed to Waxman at his office at 250 Church Street.

2 Plaintiff's pro se form amended complaint appears to indicate that jurisdiction may also be based on 42 U.S.C. 1981 and 1983.

3 Solely for the purpose of this motion to dismiss, the facts alleged in the complaint are deemed to be true.

Defendants move to dismiss the amended complaint in this action pursuant to Rule 12 (b) (6) of the Federal Rules of Civil Procedure. Defandants are entitled to dismissal of the amended complaint on a number of grounds. First plaintiff's ADEA claims are barred because: (a) such ADEA claims were not presented to the EEOC within 300 days of their occurrence and (b) plaintiff failed to pursue her ADEA claim against Chuck Waxman in the discrimination charge she filed with the EEOC prior to bringing this action. Second, this Court lacks jurisdiction to consider the ADEA claims alleged in the amended complaint because such claims were not raised in, nor reasonably related to, the allegations set forth in the charge of discrimination plaintiff filed with the EEOC. Third, plaintiff has failed to name Chuck Waxman as defendant -in this action, much less to allege that Waxman engaged in any of the conduct complained of in the amended complaint. Fourth, plaintiff's 1981 and 1983 claims are time-barred. Fifth, plaintiff's amended complaint does not state a claim under either 1981 or 1983. Accordingly, plaintiff's amended complaint should be dismissed in its entirety.

Statement of Facts[3]

On November 29, 1995 plaintiff filed a pro se amended complaint commencing this action. Attached to that amended complaint were: (1) a summons addressed to Chuck Waxman as "Personnel Director" for the City of New York and HRA: (2) plaintiff's application to proceed in forma pauperis: (3) plaintiff's November 16, 1992 ADEA charge of age discrimination (Federal Charge No. 16G930165 (hereinafter "ADEA charge" or "EEOC charge"); (4) a June 26, 1995 Determination And Order After Investigation from the State Division of Human Rights stating that probable cause did not exits to support plaintiff's charges of age discrimination; and (5) the EEOC's August 21, 1995 Determination apprising plaintiff that no violation of the ADEA had been, found and that she had the right to commence suit in federal district court. These documents are annexed hereto, collectively as Exhibit "A".

On November 16, 1992, plaintiff filed a charge of age discrimination against the City and HRA with the State Division of Human Rights and the EEOC. See amended complaint (Exhibit A) at p. 5.11 9-10. This EEOC charge alleges that plaintiff was unfairly threatened with disciplinary action by Beverley Moran, a supervisory HRA employee in her late 40s. Plaintiff alleges in her EEOC charge that she is 56 years old. The EEOC charge also alleges that two younger HRA employees suggested to plaintiff that she retire. Plaintiff's EEOC charge does not allege that defendants discriminated against her by denying her promotions. See November 16, 1992 EEOC charge (Exhibit A).

Plaintiff's amended complaint alleges for the first time that plaintiff was denied promotions by HRA because of her age. Specifically, plaintiff alleges that between 1987 and April 16, 1991 she was denied promotion from Principal Administrative Assistant ("PAA") I to Principal Administrative Assistant II, while younger persons were promoted. See amended complaint (Exhibit A) at p. 4, 5.

Chuck Waxman, HRA's Deputy Director for Personnel and Administration, received by mail a copy of the amended complaint along with a summons addressed to him as "Personnel Director NY City Dept. of Human Resources" Mr. Waxman who is not named as a defendant, nor referred to, in the amended complaint accepted service on behalf of HRA. Mr. Waxman is not named, nor referred to, in the ADEA charge of discrimination plaintiff filed with the EEOC and the State Division of Human Rights. See ADEA Federal Charge No. 16G930165 (Exhibit A)

ARGUMENT

POINT I

PLAINTIFFS CLAIMS PURSUANT TO THE ADEA 1981 AND 1983 ARE TIME-BARRED IN WHOLE OR IN PART AND MUST BE DISMISSED

A. Filing with the EEOC

In this Circuit, the failure to file a timely charge of discrimination with the EEOC renders the claim time-barred. Butts v. NYC Dept. of Housing Preservation and Development, 990 F. 2d 1397, 1401 (2d Cir. 1993), citing Gomes v. Avco Corp., 964 F. 2d 1330 1332-33 (2d Cir. 1992); Zipes v. Trans World Airlines, Inc., 455 U.S. 385, 393, 102 S. Ct., 1127, 1132 (1982). In states such as New York, which have an agency such as the New York State Division of Human Rights to address charges of discriminatory employment practices, the statute of limitations for filing a charge of discrimination with the EEOC is 300 days. Butts, 990 F. 2d at 1401, citing 42 U.S.C. 2000 e-5(e). See also Miller v. International Tel. & Tel., 755 F.2d 20, 23 (2d Cir.), cert. denied, 474 U.S. 851, 106 S. Ct. 148 (1985).

In the present case, plaintiff claims she was subjected to discriminatory treatment between 1987 and April 16, 1991. See amended complaint (Exhibit A) at p.4, ¶5. Specifically, she alleges that during this period of time she was denied promotions which were given to other employees. Id. Plaintiff however also alleges that she did not file her ADEA charge of discrimination with the EEOC until November 16, 1992. Id. at p.5, ¶10. This was five years after the first instance of alleged discriminatory conduct and nineteen months some (570 Days) after the last alleged instance. Accordingly because none of

discriminatory conduct alleged in the amended complaint occurred within 300 days prior to her November 16, 1962 filing of an ADEA charge, all of plaintiff's ADEA claims are time-barred.

B. ADEA Statute of Limitations

The ADEA also prescribes a two-year limitations period for a civil action based on violation of this statute. '29 U.S.C. 626(e); 29 U.S. C.S. 255. See Russo v. Trifari Krussman & Fishel, Inc., 837 F. 2d 40, 43 (2d Cir. 1988) (ADEA, 29 U.S.C. 626(e)(1) (1982) incorporates Section 6(a) of the Portal to Portal Act of 1947 which prescribes a two-year statue of -limitations for all actions except actions arising out of wilful violations). [5] This is so because, unlike complainants pursuing Title VII claims, plaintiff did not have to wait for a right to sue letter from the EEOC regarding claims which accrued before November 21, 1991; she could have commenced suit on such claims in federal district/court 60 days after filing her age discrimination charge with the EEOC. See Chapman v. City of Detroit, 808 F. 2d 459 (6th Cir. 1986) 29 U.S.C. 626(d).

Here, all of plaintiff's ADEA promotion claims alleged in the amended complaint arose on or before April 16, 1991. Thus plaintiff's time to commence her ADEA action expired in April 1993. Even assuming arguendo, that plaintiff had alleged that HRA was in wilful violation of ADEA (which she did not) this could extend the limitations period only one more year. Thus, the absolute outside date for her to commence a claim of wilful age discrimination would be April 1994. Since this action was not commenced until November 29, 1995 when plaintiff filed her pro se amended complaint, all her ADEA claims are unquestionably time-barred.

C **Plaintiff's 1981 and 1983 Claims age Time-Barred and Also Fail To State A Claim.**

For the purposes of selecting an appropriate limitations period, federal courts apply the forum state's statute of limitations applicable to personal injury actions. Goodman v. Lukens Steel Co., 482 U.S. 656, 660-61 (1987) Wilson v. Garcia, 471 U.S. 261, 280 (1985). In New York, the applicable statute of limitations in N.Y. Civ. Prac L&R 214(5) (McKinney's 1990) which provides a three-year limitations period for actions pursuant to 1981 and 1983 claims. See Tadros v. Coleman, 898 F. 2d 10, 12 (2d Cir.) cert denied 498 U.S. 869 (1990).

The statute of limitations is computed from the date of accrual of the cause of action to the date when the action is commenced in federal court by the filing of a complaint. See Rule 3 of the Federal Rules of Civil Procedure; DeMatteis v. Eastman Kodak Co., 511 F. 2d 306, 311-12 8 (2d Cir. 1975). Thus, any 1981 or §1983 claims alleged here could not be timely unless they occurred within three years prior to the commencement of this action (November 19, 1996) The last allegedly unlawful act complained of in the amended complaint occurred on April 16, 1991. Since this is more that four and a half years before this action commenced, plaintiff's § 1981 and 1983 claims, if any, are clearly time-barred.

Finally, defendants submit that plaintiff cannot state a claim under either of these statutes. To begin with §1981 and 1983 does not provide redress for persons claiming age discrimination. See Patterson v. McLean Credit Union, 491 U.S. 164, 109 S. Ct. 2363 (1989); Rivers, 114 S. Ct. 1510, 1514; Zombro v. Baltimore City Police Dept., 868 F. 2d 1364 (4th Cir.) cert denied, 110 S. Ct. 147, 493 U.S. 850 (1989) (ADEA provides exclusive remedy for age discrimination and precludes action for such discrimination pursuant to 1983).

---

4 While the Civil Rights Act of 1991 eliminated this limitations period for ADEA claims, the 1991 Act is prospective only in its application, and thus claims occurring prior too the November 21, 1991, the effective date of this legislation, remain subject to this limitations period. See Landsgraf v. USI Film Products, 511 U.S. 114 S. Ct. 1483 (1994) and Rivers v. Roadway Express, Inc., 511, U.S. ___ 114 S. Ct. 1510 (1994).

5 In cases of wilful violation the elimitations period is three years. 29 U.S.C. 255.

Next, since plaintiff's 1981 claims all accrued prior to November 21, 1991 the effective date of the Civil Rights Act of 1991, they are controlled by the decision of the United States Supreme Court in Patterson v. McLean Credit Union, 491 U.S. 164, 109 S. Ct. 2363 (1989). Rivers, Supra, 114 S. Ct. at 1519, 1520; Butts, Supra, 990 F.2d at 1411. In Patterson, the United States Supreme Court narrowly defined the type of claims which could be maintained under 1981. The Supreme Court held that allegations of discrimination in the terms and conditions of employment (precisely the type of conduct alleged here) were not actionable under §1981. The Court also expressly precluded plaintiff's from pursuing promotion claims in a §1981 suit, except where the promotion was exceptional in nature: where it would create a new and distinct relation between the employer and employee. No such promotion is at issue in the case at bar. Plaintiff merely complains that she was denied promotion from Principal Administrative Assistant I to Principal Administrative Assistant ("PAAII"). Accordingly, no 1981 claim has been stated here.

Plaintiff's 1983 claim, if any, must be dismissed pursuant to Fed. Rule Civil Procedure 12(b)(6). To maintain in a §1983 claim against a municipal entity, plaintiff must plead that she suffered some constitutional deprivation that was caused by a specific identifiable policy, practice or custom of the municipality, Monell v. New York City Department of Social Services 436 U.S. 658, 690, 98 S. Ct. 2018, 2035-36 (1978) or that the challenged conduct directly resulted from a determination "properly made by [the] governments authorized decision makers". Pembauer v. City of Cincinnati, 475 U.S. 469, 481, 106 S. Ct. 1292, 1299 (1986). Here plaintiff alleges no more that that she was denied promotions to PAAII because of her age, and that she was mistreated in the work-place, by her co-workers (primarily), and by James Pyatt, the field manager at the Waverly Center, one of HRA's field offices. She does not suggest, much less allege that the complained-of conduct was pursuant to a custom, policy or practice of

---

6 As noted at footnote 2 above, it is entirely likely that plaintiff is not even pursuing claims pursuant to these statutes.

HRA or the City or that this conduct was ordered by a high level government decision maker. Accordingly plaintiff cannot maintain §1983 claim against defendants.

POINT II

THIS COURT LACKS JURISDICTION TO CONSIDER PLAINTIFF'S PROMOTION CLAIMS BECAUSE THEY WERE NOT ASSERTED IN THE CHARGE OF DISCRIMINATION PLAINTIFF FILED WITH THE EEOC AND STATE DIVISION.

A district court only has jurisdiction to hear discrimination claims which are included in an EEOC charge. Butts, Supra, 990 F. 2d 1397, 1401 (2d Cir. 1993); Miller v. International Tel. & Tel., 755 F. 2d 20, 26 (2d Cir.), cert denied, 474 U.S. 851, 106 S. Ct. 148, (1985). "The purpose of the notice provision, which is to encourage settlement of discrimination disputes through conciliation and voluntary compliance, would be defeated if a complainant could litigate a claim not previously presented to and investigated by the EEOC". Butts, 990 F. 2d at 1401, quoting Miller, 755 F. 2d 20 at 26. See also Stewart v. United States Immigration and Naturalization service, 762 F. 2d 193, 198 (2d Cir. 1985) (the purpose of requiring a potential litigant to exhaust his administrative remedies before the EEOC "is to give the administrative agency the opportunity to investigate, mediate, and take remedial action ...").

The amended complaint alleges that plaintiff was denied promotion to PAAII (from PAAI) between 1987 and April 16, 1991. Plaintiff's November 16, 1992 EEOC charge, however, never mentions

these promotions claims. Thus, even assuming arguendo that such claims were not time-barred, this Court does not have jurisdiction to consider them because they were never presented to the EEOC or State Division for investigation or mediation.

POINT III

PLAINTIFF CANNOT STATE AN ACTIONABLE ADEA CLAIM AGAINST CHUCk WAXMAN BECAUSE: (1) WAXAM WAS NOT HER EMPLOYER; (2) HE IS NOT NAMED AS A DEFENDANT AND; (3) HE IS NOT ALLEGED TO HAVE TAKEN ANY OF THE ACTIONS COMPLAINED OF IN THE COMPLAINT.

While the complaint does not name Chuck Waxman as a defendant, it could appear from the summons that plaintiff intended to pursue an age discrimination action against him.

Claims brought pursuant to ADEA are analyzed under the same framework as claims brought pursuant to Title VII. Woroski v. Nashua Corp., 31 F.3d 105, 108 (2d Cir. 1994) citing Trans World Airlines Inc. v. Thurston, 469 U.S. 111, 121 (1985); Robinson v. Overseas Military Sales Corp., 21 F. 3d 502 (2d Cir 1994). Title VII and ADEA statutes are both designed to govern the conduct of employers, not individual natural persons who are not themselves employers. Bramesco v. Drug Computer Consultants, Bramesco v. Drug Computer Consultants, 834 F. Supp. 120, 123 S.D.N.Y. 1993 citing, Miller v. Maxwell's International, 991 F. 2d 583 (9th Cir. 1993), cert denied 114 S. Ct. 1049 (1994) Both statutes define "employer" as "a person engaged in industry effecting commence who has 15 or more employees". See 29 U.S.C. 630b and 42 U.S.C. 2000e (b).

Thus, if plaintiff does intend to sue Chuck Waxman for age discrimination, this claim is subject to dismissal because Waxman is merely another employee of her former employer (HRA), not her actual employer, However, even -if plaintiff could legally. maintain an ADEA claim against Waxman as an employee of her former employe , she has failed to name him as a defendant in this action, much less to allege that Waxman had any personnel involvement in the conduct she complains of. This alone also renders her complaint completely defective. See eg., Bramesco, 834 F. Supp. 120, 123 (without demonstrating that an individual defendant engaged in some intentional misconduct prohibited by the ADEA no action will lie); Archer v. Globe Motorists Supply Co., Inc., 833 F. Supp. 211, 213 (S.D. N.Y. 1993) (same); Wanamaker v. Columbian Rope Co., 713 F. Sup. 533, 543-44 (N.D.N.Y. 1989) (complaint dismissed against the individual defendant because it contains no allegations that the individual defendant engaged in any of the conduct complaint of).

Plaintiff, moreover, has failed to name or even mention Waxman in the ADEA charge of discrimination she filed on November 16, 1992 with the State Division of Human Rights and the EEOC. A civil action in federal court may only be brought against a party named as a respondent in a charge before the EEOC. See e.g. Richter v. Buffalo Municipal Housing Authority, 49 Fair Empl. Prac. Cas. (BNA) 674, 1989, WI 24513 (W.D.N.Y. 1989): Travers v. Corning Glass Works, 76 F.R.D. 431, 433 (S.D. N.Y. 1977). Consequently, plaintiff's ADEA claims (if any) against Chuck Wasman must also be dismissed.

CONCLUSION

For the foregoing reasons, the defendants respectfully request that the amended complaint be dismissed in its entirety with prejudice, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
April 15, 1996

PAUL A. COTTY
Corporation Counsel of the
City of New York
Attorney for Defendant
100 Church Street, Room 2-124
New York, New York 10007
(212) 788-0867

By: "s"/_____."
JAMES A. GIRILLO
(JG 1-506)
Assistant Corporation Counsel

---

[7] ADEA differs only in the number of employees an employer must have. AMA defines an "employer" as "a person engaged in industry who has 20 or more employees". 29 U.S.C. 630(b).

Index No. 95 Civ. 10074 (MGC)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BLAME HUTCHERSON,

Plaintiff,

- against -

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES,

Defandant.

MEMORANDUM OF LAW IN SUPPORT OF DEFANDANTS' MOTION TO DISMISS

PAUL A. CROTTY
Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street
New York,, N.Y. 10007

Of Counsel: James A. Girillo
Tel: (212) 788-0867
NYCLIS No

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

BLANCHE HUTCHERSON

Plaintiff,

95 Civ. 10074(MGC)

- against-

THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF HUMAN RESOURCES

Defendants,

----------x

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT CITY OF NEW YORK'S MOTION FOR SUMMARY JUDGMENT

Preliminary Statement

Defendant, City of New York,[1] submits this memorandum of law in support of its motion for summary judgment in this action. Since this Court by its August 14, 1996 Memorandum Opinion and Order granted in part defendant's motion to dismiss the complaint, the sole remaining claim here is plaintiff's allegation that in October and November 1992 she was unjustly brought up on charges, threatened with termination and told she should retire because of her age, in violation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. 621-634 (1994).

The City submits that for the following reasons no genuine material issue of fact exists with respect to this ADEA claim. First,

---

1 The caption also names the New York City Human Resources Administration ("HRA") plaintiff's prior employer. However, since HRA is really a City Agency, and not a separate suable entity, plaintiff's claims against HRA are synonymous with her claims against City.

plaintiff fails to make out a prima facie case of age discrimination because it is undisputed that the individual who engaged in the allegedly impermissible conduct, Beverly Moran, the Director of HRA'S Yorkville Income Support Center where plaintiff worker in 1992, is not only well within ADEA's protected class but very close in age to plaintiff. Ms. Moran, who like plaintiff, is retired from HRA, was 53 years of age in October of 1992 and plaintiff was 55.

Next, plaintiff fails to make out a prima facie case of age discrimination because she has failed to establish at least two essential elements of this claim: (1) that she was performing her job at a level which met her employer's legitimate expectations and (2) that other substantially younger employees were treated more favorably. Here, the undisputed evidence established that plaintiff's Director, Ms. Moran, had received numerous written and oral complaints about plaintiff's conduct and unprofessional behavior from virtually all of plaintiff's supervisees and supervisors, and that Plaintiff had refused Ms. Moran's request to behave more professionally in the future. The evidence establishes, more-over, that plaintiff was not singled out by Ms. Moran for counseling or disciplinary action, that other workers also received counselings and warnings from Ms. Moran,

However, even assuming plaintiff had offered evidence sufficient to create a prima facie case of age discrimination, Ms. Moran has offered evidence demonstrating that her decision to refer plaintiff for disciplinary action after receiving numerous complaints about plaintiff from her supervisors and supervises and after meeting with plaintiff but failing, to gain plaintiff's cooperation in modifying her behavior — was a legitimate non-discriminatory response to plaintiff's ongoing behavioral problems. There is no dispute, moreover, that Ms. Moran did not cause plaintiff to be discharged or suspended and, that following a disciplinary conference, plaintiff's only penalty was the proposed loss of five days salary which plaintiff was never required to pay.

Accordingly, because Ms. Moran's reasons for their action here

was legitimate and non-discriminatory and because plaintiff is unable to offer evidence demonstrating that defendant's explanation was false and that plaintiff's age was the real reason behind Moran's action, summary judgment should be entered in favor of the City.

ARGUMENT[2]

POINT I

THERE ARE NO DISPUTED MATERIAL FACTS AND, AS A MATTER OF LAW, DEFENDANT IS ENTITLE TO SUMMARY JUDGEMENT,

Defendant is entitled to summary judgement because there is no genuine issue of material fact to be tried. Summary judgment is to be granted when the pleadings, depositions answer to interrogatories, affidavits and other admissible evidence the Court show that there is not genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(b); Celotex Corp. v. Catrett, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555 (1986). In Celotex, the Supreme Court held that "[s] summary judgment is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed to secure the just, speedy add inexpensive determination of every action." Id., (citations omitted) . Where the nonmoving party has the burden of

2 For facts material and relevant to this motion, defendant respectfully refers the Court to its Statement Pursuant to Local Civil Rule 56.1, the exhibits and deposition transcripts cited therein and the Declaration of Beverly Moran.

proof on a particular issue, summary judgment should be granted if there is no evidence to support the nonmoving party's case. Celotex, 477 U.S. at 322-23, 325, 106 S. Ct. at 2554.

For a genuine issue of material fact to exist, there must be a real dispute regarding a fact which is essential to the nonmoving party's case. If there is no real dispute, or if there is a real dispute regarding a fact which will not affect the outcome of the case, then summary judgment is appropriate. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510 (1986).

Therefore, after the moving party has carried its burden, the nonmoving party "must do more than simply show that there is some metaphysical doubt as to the material facts.'! Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 1356 (1986) . Factual disputes regarding issues which are irrelevant or unnecessary to the suit do not preclude an award of summary judgment. Anderson, 477 U.S. 242 at 247-48. Which facts are material is determined by substantive law Id.

These general principals governing a motion for summary judgment apply no less simply because this is an employment discrimination case. Hunt v. Tektronix. Inc., 952 F. Suppl. 998, 1002 (W.D.N.Y. 1997). Thus to survive this motion for summay judgment, plaintiff "must do more that present conclusory- allegations of discrimination, [s]he must offer "concrete particulars' to substantiate the claim." Id. citing Meiri v. Dacon, 759 F. 2d 989 (2d Cir.), cert. denied, 474 U.S. 829, 106 S. Ct. 91 (1985). In this memorandum, defendant will demonstrate that plaintiff is unable to prove the requisite elements to support her claim and that defendant has a reasonable non-discriminatory explanation for its action here.

POINT II

PLAINTIFF HAS FAILED TO MAKE OUT A PRIMA FACIE CASE OF AGE DISCRIMINATION BECAUSE THE CITY EMPLOYEE, BEVERLY MORAN, WHO SHE CLAIMS SUBJECTED HER TO AN ADVERSE EMPLOYMENT ACTION IS INSIGNIFICANTLY YOUNGER.

While there are several reasons why plaintiff fails to make out a prima facie ADEA case, defendant will begin with Ms. Moran, the Director of the Yorkville Income Support Center ("Yorkville"), where plaintiff worked as a Principal Administrative Assistant Level I ("PAA 1) in 1992. Plaintiff alleges that in the Fall of 1992, Ms. Moran brought her up on charges, threatened her with suspension and termination, and told her to retire. As discussed below, Ms. Moran's alleged conduct cannot as a matter of law provide the basis for this ADEA claim.

To make out a prima facie Case under ADEA, a plaintiff must demonstrate 1) that she was within the protected age group. 2) that she was qualified for the position, 3) that she suffered an adverse employment action, and 4) that such action occurred under circumstances giving rise to an inference of age discrimination. Hurd v. JCB Intern Credit Card Co. LTD, 923 F. Supp. 492 (S.D.N.Y. 1996); Sutera v. Schering Corp., 73 F. 3d 13, 16 (2d Cir. 1995) Woroski Nashua Corp., 31 F.3d 105, 108 (2d Cir. 1994, v. 3). Further, the Supreme Court has recently held that where the age differential between the plaintiff and the person replacing her is not great (i.e. where the other individual is "insignificantly younger") " an inference [of age discrimination can not be drawn." O'Conner v. Consol. Coin, Cateres, 517 U.S. 116 S. Ct. 1307, 1310 (1996); Fisher v. Vassar College, 70 F. 3d 1420, 1450 (2d

[3] The Circuit cases cited above differ only in that they pertain to cases where the plaintiff was terminated rather than (as in the case here) merely brought up on disciplinary charges. Thus, the adverse action enumerated in these Circuit cases is more specific: termination from employment.

Cir. 1995), reversed on other grounds, 114F 3d 1332 (2d Cir. 1997).

In the present case, therefore, Ms. Moran's actions cannot give rise to an inference of discrimination absent evidence that she was substantially younger that plaintiff.

While there is no magical formula for determining when particular age differential will support an inference of discrimination (See e.g. Barber v. CSX Dist. Service, 68 F. 3d 694, 699 (3d Cir. 1995), numerous cases hold that a differential of one to six years is simply inadequate to make out a primp facie ADEA case, particularly where plaintiff has failed to offer direct proof of discriminatory intent. See Gray v. York Newspapers. Inc., 957 F. 2d 1070, 1087-88 (3d Cir. 1992) (one year age differential insufficient to establish prima facie case of Age discrimination where there younger employees also suffered adverse action); Estepa v. Shad, 652 F. Supp. 567,571-72 (E.D.N.Y. 1987) (holding six year age differential not sufficient to establish a prima facie case); Hefferman v. Colonie County Club, 160 A.D. 2d 1062, 553 N.Y.S. 2d, 544 545 (3d Dep't 1990) two year age differential too insignificant a difference in age to "permit even an inference of age discrimination") Pace v. Southern Railway System, 701 F. 2d 1383, 1383, 1390 (11th Cir.) cert denied, 464 U.S. 1018, 104 S.Ct. 549 (1983) (two year age differential insufficient to establish a prima facie case of age discrimination in absence of direct proof of discriminatory intent or statistical evidence showing pattern of discrimination).

Here it is undisputed that plaintiff is only two years older than Beverley Moran the individual alleged to have discriminated against her, and the record is devoid of any direct evidence demonstrating that Moran intended to discriminate against plaintiff because of her age. Indeed, the evidence in the record reflects the contrary, that Ms. Moran's determination to refer plaintiff for discipline was not motivated by plaintiff's age and that Moran believed she and plaintiff were about the same age. See Exh. M at ¶ 7. Accordingly, as a matter of law and logic, Plaintiff's ADEA claims fail to create an inference of age

discrimination[4]

POINT III

PLAINTIFF IS ALSO UNABLE TO ESTABLISH THE SECOND ESSENTIAL ELEMENT NECESSARY TO MAKE OUT A PRIMA FACIE ADEA CASE: THAT SHE WAS PERFORMING IN A MANNER CONSISTENT WITH HER EMPLOYER'S LEGITIMATE EXPECTATIONS.

The second element a plaintiff must satisfy to establish a prima. facie case of age discrimination is that she was qualified for the position, Woroski, F. 31 '105,1 *108 (2d* Cir. 1994), or was performing her job at a level which met her employer's legitimate expectations. O'Conner, 116 S. Ct. at 1309; 134 L. Ed 433 at 4375. Plaintiff, in the case at bar was a PAA I with supervisory responsibilities for approximately 5 to 6 employees. While she may contend that she performed such surervisory duties adequately and had previously received at least adequate performance evaluations it is undisputed that in 1992 her Director, Beverly Moran, received numerous written and oral complaints about plaintiff's conduct and interpersonal skills from both plaintiff's supervisees and immediate supervisors. See Hutch Dep

4. Although there is no real dispute that Ms. Moran made the decision to seek disciplinary action against plaintiff, the other individual she complains about, James Pyatt, was also close in age to her and less than five years younger (See Pyatt Dep. Trans., Exhibit D to Girillo Declaration at P. 5) . There is example evidence in the record, moreover, demonstrating that Mr. Pyatt, who was an Assistant Deputy Commissioner at HRA at the time with general oversight of 40 centers like Yorkville, had no absolutely role in, nor knowledge of, Ms. Moran's decision in 1992 to refer plaintiff for disciplinary action. . See Exh. D at pp. 39, 40-41; Moran Dep. Trans. Exh. B at pp. 7-8, 31 and Moran Declaration (Exh M) at ¶ 3. Finally, plaintiff's only "evidence"of Pyatt's participation in the decision to commence a disciplinary action against her is unspecified and conclusory speculation that Pyatt was controlling Moran and that he had visited Yorkville in 1992 for the purpose of recommending that she be mistreated.

Trans. (Exh. A) [6] at p. 129; Moran Dep. Trans (Exh. B) at 7, 9-10; Morin D cla. (Exh. M) at ¶¶8-9.

Further, Ms. Moran testified that she herself observed plaintiff behaving unprofessionally and that when she met with plaintiff in the Spring of 1992 to address this issue, plaintiff denied she had such a problem and refused to modify her behavior. Exh. A at p. 128; Exh. B at pp. 19-21, 31, 40; Exh. M at ¶ 16-17.It is undisputed therefore that by mid-June 1992, Ms. Moran had in her possession information sufficient for her to form the reasonable belief that plaintiff was not adequately performing her duties as a "PAAI and supervisor T.

that plaintiff was not adequately performing her job inthe summer of 1992, plaintiff's claim that shortly thereafter she was improperly refered for disciplinary action fails to estalbish a prima facie case of age discrimination.

POINT IV

EVEN ASSUMING PLAINTIFF COULD MAKE OUT A PRIMA FACIE CASE OF AGE DISCRIMINATION, DEFENDANT IS STILL ENTITLED TO SUMMARY JUDGMENT BECAUSE IT HAS COME FORWARD WITH A LEGITIMATE NON-DISCRIMINATORY REASON FOR ITS DECISION TO COMMENCE A DISCIPLINARY ACTION AGAINST PLAINTIFF, AND PLAINTIFF IS UNABLE TO OFFER EVIDENCE DEMONSTRATING THAT THIS EXPLANATION IS FALSE AND THAT DEFENDANT'S REAL MOTIVATION FOR THIS ACTION WAS PLAINTIFF'S AGE.

[5] This comes from the dicta, not holding, of the Court in O'Conner.

[6] All exhibits referred to herein are annex *to* the Declaration of James Girillo.

Assuming for the purpose of argument only that plaintiff made out a prima facie ADEA case, summary judgment should still be awarded to defendant because, as discussed
Ms. Moran had a Legitimate, non-discriminatory reason for counseling plaintiff, and asking HRA's disciplinary action against her.

When a plaintiff in an ADEA case "the burden of production shifts to the employer to articulate some legitimate, non- discriminatory reason for the adverse [action] " O'Conner, 134 L ED2d at 437-438, citing and quoting, McDonnel Douglas v. Green, 411 U.S. 792, 802 (1973). "The purpose of the McDonnel Douglas framework is to force the defendant to give an explanation for its conduct, in order to prevent employers from simply remaining silent while the plantiff founders on the difficulty of proving discriminatory intent." Fisher v.Vassar College, 114 F. 3d 1332; 1335 (2d Cir.1997) citing Texas Dept of Community Affairs v. Burdine, 450 U.S. 248. 254-56 & N.

"It is important to note, however, that although the McDonnel Douglas presumption shifts the burden of production to the defendant, '[t]he ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff.", Vassar, 114 F.3d' at 1335, citing, St. Mary's 509 U.S. 502 at 507, 113 S. Ct. 2742 (1993) quoting , Brudine, 450 U.S, at 253 . 101 S.Ct. at 1093. Thus, once the defendant offers a legitimate non-discriminatory 'motive for its action, the "burden of persuasion as to discrimination is on plaintiff; the presumption that triggered the defendant's burden of production has drop[ped] out of the picture: [and] the McDonald Douglas framework with its presumptions and burdens is no longer relevant. Vassar at 1336, quoting, St. Marys 509 U.S. at 511; 113 S.Ct. at 2749 and Saulpough v. Monroe Community Hosp., 4F. d. 134, 142 (2d Cir. 1993) (quoting St. Mary's).

To avoid dismissal at this juncture, plaintiff has the opportunity to demonstrate that defendants "preoffered reason was not the true reason for the employment decision and that...[age] was." St. Mary's, 509 U.S. at 507-08, 113 S. Ct. at 2747, quoting Burdine , 450 U.S. at 256, 101 S. CT at 1095 (emphasis added.) Therefore, as in any other civil case plaintiff is required to prove by a preponderance of the evidence that defendant's alleged conduct was intentional age discrimination. Vassar at p. 1336.

"Some evidence [of age discrimination] is not sufficient to withstand a properly supported motion for summary judgement; a plaintiff opposing such motion must produce such evidence to support a rational finding that the legitimate, non-discriminatory reasons proffered by the employer were false, and that more likely than not the employes's age was the real reason for the discharge." Woroksi, 31 F. 3d 105, 109-110, citing St. Marys, 113s. Ct. at 2752. Plaintiff conclusory allegations of discrimination are not sufficent to rebut defenent stated reason for its action. Sciarrno v. Municpal Credit union, 894 F. Supp. 102 (E. D. N.Y. 1995). Nor will comments by U plaintiffs co-workers, who did not take the complained of action here, be sufficient to create a material issue of fact for trail. See Kotlowski v. Eastman Kodak Co., 922 F. Supp.790, 800-801 (W.D.N.Y. 1996) (testimony by planitff's supervisor who did not take adverse action against her not sufficient to defeat defendent's summary judgment motion).

A. HAD A LEGITIMATE NON DISCRIMINATORY REASON FOR COUNSELING PLAINTIFF AND REFFERING HER FOR DISCIPLINIARY ACTION.

Beverly Moran, Yorkville's Director and the individual who attempted unsuccesssfully to counsel plaintiff about her conduct and ultimately requested tha plaintiff receive disciplinary charged, has

presented ample evidence of a non-discriminatory basis for her actions. Ms. Moran , who is only two years younger than plaintiff, testified that she began recieving in the spring of 1992 numerous written and oral complaints about the plaintiffs about plaintiff's conduct and treatment toward her supervises as well as her supervisors. See Exh. A. at p. 129; Exh. B. at pp. 7,9,10; Exh. M. at¶¶ 4-5. Ms. Moran also testified that her immediate subordinate, Ms. Darden, the office manager at Yorkville had recommended tht plaintiff be refered for disciplinary action in a memorandumdated June 3, 1992. (See Exh. F). Ms. Moran was advised by Ms. Moran at this time that plaintiffs behavorial problems were longstanding and that Darden's efforts and those of the prior Yorkville Director, Gail Godwin, to counsel plaintiff, had proved unsucessful. Exh. F.

However, it was only after Ms. Moran actually met with plaintiff to discuss these complaints, and was unable to secure plaintiff commitmant to behave more professionally that Ms. Moran decided to refer plaintiffs case to HRA's employees Discipline unit. On or about June 16th, 1992, Ms. Moran forwarded to HRA's employees discipline action be taken against plaintiff. Moran's memorandum to the discipline unit was accompanied by approximately 17 memoranda she had recieved from plaintiff's supervisors and supervise complaining about plaintiff's conduct. See Exh. M. at ¶¶17-18; Exh. G. While making this request, however Ms. Moran did not recommend that plaintiff receive any specific vpenalty and she did not ask that plaintiff be suspended or terminated. See Ech. M at ¶¶7; exh.G.

Ms. Moran testified that she took this action against plaintiff, because she was required to do so by HRA regulations and because she expected all her employees to behave professionally. Exh. M. at ¶10. Ms. Moran also testified that she had not singled plaintiff out because of her age which she believed to be very close to her own and that prior to speaking with plaintiff in June 1992, she had not received any complaints made by plaintiff regarding co-workers. Further, when

plaintiff's problems with her supervisor continued in November 1992, Ms. Moran met with both plaintiff and five of plaintiffs' supervise to admonish all of them to behave more professionally. Exh. M at ¶¶28-29. Following this meeting these individuals each recieved a mono from Moran admonishing them to behave more professionally and warning them that further unprofessional conduct could lead her request the commencement of disciplinary action. See Exh. M. at P30; Exh. I. Ms. Moran also testified that while plaintiff's conduct did not improve following this meeting the conduct of her supervisees did. Exh. M. at ¶31.

There is ample testimony in the record demonstrating that Ms. moran was confronted here with the situation where one of her PAA I's (a supervisor) was the subject of numerous complaints charging her with unprofessional, even abusive conduct. In addition , when Ms. Moran attempted to ameliorate the sitaution by meeting with plaintiff to discuss these complaints, plaintiff proved to be in denial about them and, most significantly, refused to agree to conduct herself more professionally in the future. Under te circumstances, when Ms. Moran finally decided to refer plaintiff's case for disciplinary action, that decision was unquestionably legitimate, non-discriminatory and reasonable.

B **PLAINTIFF IS UNABLE TO CREATE A MATERIAL ISSUE OF FACT AS TO WHETHER (1) THE CITY'S ASSERTED REASON FOR ITS ACTION IS FALSE OR UNWORTHY OF BELIEF AND (2) MORE LIKELY THAN NOT, PLAINTIFF'S AGE WAS THE REAL REASON FOR THE CITY'S ACTION.**

To avoid summary judgment here where Beverly moran has offered a legitimate non-discriminatory reason for her action, plaintiff must come forward with either direct or circumstantial evidence, of

circumstances sufficient to support a rational finding that Moran's explanation is false and plaintiff's age was the real reason behind her decision. Woroski, 31 F. 3d 105. 109-110; Vassar 70 F. 3d 1420, 1450. here plaintiff who has had the opportunity to conduct extensive discovery[8] has been unable to uncover any direct evidence tending to show that Beverly Moran's stated reason for her action toward plaintiff in 1992 is false and that Moran was really motivated to so act because of plaintiff's age. Nowhere in plaintiff's desposition transcripts or in the transcript of the other 11 deponents is there testimony that Moran made false statements or took action toward plaintiff because of her age. Ms. Moran on the other hand, clearly denies that age played any ole in her actions. See exh. M at ¶¶7.

Plaintiff has also failed to uncover indirect or circumstantial evidence demonstrating that age discrimination was the real motivating factor behind this case. The strongest evidence offered by plaintiff is that Maria Martinez, one of the employees plaintiff supervised, told her on a number of occasions to retire. However, as discussed above in Point I, such comments by co-workers particularly those not making the challenged for trail. See Woroski, action do not create a material issue of fact 31 F. 3d at 109-110 (general statements by plaintiff's supervisor contending that work force was older, had been around too long, made too much money, enjoyed too many benefits and that the company needed new, younger, more aggressive people, while some evidence of age discrimination, was not sufficient to defeat summary judgment); Kotlowski. 922 F. Supp. 790, 801 (stray comments by co-workers of plaintiff's statement who did supervise her insufficient to rebuts

9.

Of course like many other portions of her depositions transcript, plaintiff subsequently made substantial modifications to sword responses.

Accordingly, because some evidence is not sufficient to withstand a properly supported motion for summary judgment, Woroski, Supr, at p. 109-110 and plaintiff has failed to uncover evidence creating an inference that Moran's stated reason for her action if false and that plaintiff's age was more likely than not the reason for her action, Id., defendent's motion should be granted in its entirety. 10

defendant's stated reason for plaintiff's termination).

While plaintiff offer many explanations for her problems with her Yorkville co-employees the other employees were all friends, knew each other from other HRA centers, were sleeping together, or acting the secret direction of James Pyatt - the explanation she offers with the least conviction is that her treatment was motivated by age discrimination. Indeed, at pp. 129-130 of her deposition transcript (Exh. A.) plaintiff seems hesitant and uncertain about the reasons behind defendants action towards her, stating at one point that she didn't know why she was being written up and served with disciplinary charges (P. 129 L-18-22) and at another point that she was not sure on what particular basis she was being discriminated against (P. 130 L. 16-17). In any event, such conclusory allegations are insufficient to rebut Ms. Moran's stated reason for seeking disciplinary action against plaintiff. Meiri v. Dacon, 759 F 2d 989,998; she must offer "concrete particulars" to substantiate her claim Id., Sciarrino, 894 F. Supp. 102, 108 (E.D.N.Y. 1995).

10

While plaintiff apparently also alleges that in October and November 1992 Ms. Moran threatened her with suspension andtermination and told her to retire, the evidentiary record reflects otherwise. Ms Moran in her deposition testimony and declaration. (See Exhibit B at pp. 23, 24-25 and Exhibits M at ¶ 10) not only denies that she told plaintiff to retire and that she would have fired or suspended, she explains quite clearly and logically what she did discuss with plaintiff: that if she continued receive complaints about plaintiff from her supervisees and supervisors she would continue as per HRA procedure to forward these complaints to HRA's discipline unit and eventually, over time, it could lead to plainiff's suspension or termination. Ms. Moran also testified that she had a similar counseling session (followed by warning memorandum) with five of plaintiff's supervisees in November 1992 and that they, unlike plaintiff, subsequently improved thier behavior See Exh. M. at ¶¶ 13-14; Exh I Finally, Ms Moran testified that she did not even know plaintiff had retired until well after the retirement papers had been submitted. Exh. M at ¶ 12. although plaintiff had ample opportunity at her deposition to provide differing version of these events, the record is devoid of such testimony. Accordingly, like plaintiff's allegations about her referral for disciplinary charges while at Yorkville, these claims are entirely conclusory and should be dismissed in their entirety.

Dated: New York, New York
November 5, 1997

PAUL A. CROTTY
Corporation Counsel of the City of New York
Attorney for Defendant
100 Church Street, Room 2-155
New York, New York 10007
(212) 788-0867

By:"s/_____".
JAMES A. GIRILLO (JG 1506)
Assistant Corporation Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BLANCHE HUTCHERSON

v.

NAME OF PLAINTIFF

PRO SE OFFICE

AMENDED COMPLAINT
THE CITY OF NEW YORK , NEW YORK CITY
DEPARTMENT OF HUMAN RESOURCES

95 Civ. 10074 (MGC)

NAME OF DEFENDENT

This action is brought for discrimination in employment pursuant to (check only those that apply):

_____ Title VII of the Civil Rights Act of 1964, as codified, 42U.S.C. §§ ¶¶2000e-17 (amended in 1972, 1978 and by the Civil Rights Act of 1991, Pub.L. No. 102-166) (race, color, gender, religion, national origin).
NOTE: *In order to bring in federal district court under Title VII, you must first obtain a right to sue letter from the Equal Employment opportunity Commission.*

__x__ Age Discrimination in Employment Act of 1967, as codified, 29 U. S. C. 621 -634 (amended in 1984,1990, and by the Age Discrimination in Employment. Amendments of 1986. Pub L. No. 99-592, the civil

rights Act of 1991, Pub L. No. 102-166).
NOTE: *In order to bring suit in federal District court under the age discrimination in employement Act, you must first file charges with the Equal Employment Opportunity Commission.*

_____ Americans with Disabilites Act of 1990, as codified,U.S. C. 12112 - 12117 (amended by the Civil Rights Act of 1991, Pub. L. No. 102-166).
NOTE: *In order to bring suit in Federal district court under the Americans wih Disabilites Act, you must first obtain a right to sue letter from the Equal Employment Opportunity Commission.*

Jurisdiction is specifically conferred upon this United States District Court by the afore mentioned statutes, as well as 28 U.S.C. §§ 1331, 1343. Jurisdiction may also be appropriated under 42 U.S.C. §§ 1981, 1983 and 1985 (3), as amended by the Civil Rights Act of 1991, Pub L. No. 102-166, and any related claims under New York Law.1. Plaintiff resides at:

341 West 24th Street Apt. 4H, New York City
Street Address

New York, New York, 10011
County *State* *Zip Code*

212-691-4210
Telephone Number

2. Defendant's lives at, or it's business is located at:

271 Church Street, New York

Street Address *City*

New York, New York, 10013 (212)274-3557

3. The address at which I sought employment or was employed by the defendent(s) is:

271 Church Street

Street Address

New York, New York, New York

County, *City,* *State*

4. The discriminatory conduct of which I complain in this action includes (check only those that apply):

_____ Failure to hire me.
_____ Termination of my employment
__x__ Failure to promote me.
_____ Failure to accomodate my disability.
Unequal terms and conditions of my employment.
_____ Retaliation
_____ Other acts (Specity): _____

NOTE: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court.

5. It is my best recollection that the alleged alleged discriminatory acts occurred on: Between 1987 to 1991, Specifically 4/28/88, James Pyatt promoted Victoria Pitchford. 1/1/91 through 4/16/91 he promoted Sally Rodriguez. (see age 1 attached).

6. I believe eve that defendant(s) (check one) N/A
   _____ N/A is till commiting these acts against me.
   _____ is not commiting these acts against me.

7. Defendant(s) discriminated against me based on my:
   (check only those apply and explain)
   [ ] race_____ [ ] color_____
   [ ] gender/sex_____ [ ] religion_____
   [ ] national origin _____
   [x] age 51 years. My date of birth is: 5/29/36
   Date
   [ ] Disability_____

NOTE: *Only those grounds raised in the charge filed with Equal Employment Opportunity Commission can be considered by the federal district court.*

8. The facts of my case are as follows: I was employed from 4/16/62 to 12/31/92 with The City of New York, New York City Department of Human Resources. I maintained satisfactory, superior, and outstanding evaluations. I took the Civil Service Test to PAAI in 1977. I was assigned to a PAAI position in 3/81. The next level is a PAAII (a provisional title no Civil Service Test required). I was denied a promotion from 1981 to 1992. I saw younger employees promoted to PAAII with less experience, knowledge, and skills from ages 34 years to 45 years. I worked 26 years with a good record and evaluations. James Pyatt promoted.

(Attach additional sheets as necessary)

NOTE: *As additional support for the facts of your claim, you may attach to this complaint a copy of the charge filed with the Equal Employment Opportunity Commission, the New York State Division of Human Rights, or the New York City Commission on Human Rights.*

9. It is my best recollection that I filed a charge with the New York k State Division of Human Rights or the New York City Commission on Human Rights regarding defendant's alleged discriminatory conduct on; 11/16/92

_____.

Date

10. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct on: 11/16/92

_____.

Date

Deborah Kellman to PAAII (Principal Administrative Associate). Victoria Pitchford (I think this was his girlfriend) Deborah Kellman, and Sally Rodriguez his personal friends. Ages 36, 35 and 41 respectively. Lindsay Watson age 34 in 1988, his friend. Frank Garcia an Mamie Matthews ages 35 and 45 respectively. Rafael Ortiz and Iris Soto approximate ages 35 and 37 respectively were ESIIIs (Eligibility Specialists) a level below PAAI wee promoted to PAAII. They had never been assigned permanently to work as a PAAI or assigned to a PAAI position.

I am requesting monetary damages because I was denied my right to be promoted.

I was treated badly by the employees who were promoted PAAII. In 1989 or 1990 I had to take three days off because I got sick from employees smoking in my cubicle, although U had NO SMOKING sign in my cubicle I went to C.P. Schooler, M.D. who told me to take 2 or 3 penicillins daily for three days before returning to work. Employees continued to smoke around me including administrators when I returned to work.

In 1991 I had an administrator (PAAII) come to my desk with a seven of eight inch blade knife, and stabbed it on case records on my desk while I was sitting at me desk working.

Beverly Moran, Director, open my personal mail and shared the information with other employees, before giving the mail to me. Lindsay Watson, PAAII, got the key to my personal drawers from the director's secretary in the Waverly Center, and open my drawers. Victoria Pitchford, PAAII, brought me up on charges by fabricating lies stating she was my immediate supervisor, and I swung at her. No original paper documents can verify she was ever my immediate supervisor, and I never swung at her. She was never assigned to cover me. From my experience I have found her to be vicious, and prone to violence. In fact she threatened to fight me in the Waverly Center. I had to run from her. James Pyatt, Field Manager, came to the Waverly Center and had Victoria Pitchford come to my unit, turn her rear end up in my face and I could see her brief under panties, while he watched with his hands

folded across his chest.

Deborah Kellman, PAAII, knocked up against me in the Yorkville Center and threaten to beat me up outside the center after 5pm in front of Beverly Moran in her office.

Beverly Moran, Director, gave approval for two PAAIIs (Sally Rodriguez and Deborah Kellman) eight PAAIs out of nine and herself to take Good Friday off in 1992. I was left to cover nine units by myself. The office manage was present.

I was miserable under James Pyatt for five or six years because of being treated badly. I was guilty of everything anyone said about me. They were innocent. There were numerous incidents where I was treated badly, and nothing was done about it.

I submitted Premember ship service (Buyback) papers to be processed for period 4/16/62 to 6/3/63 in July, 1986 by The New York City Employees', Retirement System, 220 Church Street, New York, N.Y. 10013. They failed to begin process. In June, 1992 they began the process after an audit of my files. These papers were submitted in the Waverly Center to the director in 1986.

I had to pay approximately $2,000.00 or more sometime between 1986 and 1991 because of an error that had been made on my pension. In the last five or six years I had problems with my pension. Prior to this time there were no problems.

Because of the power James Pyatt possessed and executed as director in the Waverly Center, as field manager, and deputy director of the Waverly Center, and the Yorkville Center in the Human Resources Administration specifically in my last five or six yeas employed with the City of New York. My life was miserable in the work place.

Only litigants alleging age discrimination must answer Question #11.

11. Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding defendant's alleged discriminatory conduct (check one),

___x___ 60 days or more have elapsed.
_____ less than 60 days have elapsed.

12. The Equal Employment opportunity Commission (check one):

_____ has not issued a Right to Sue letter.
___x___ has issued a Right to Sue letter, which I received on 8/23/95.

_____
Date

NOTE: Attach a copy of the Right to sue Letter from the Equal Employment Opportunity Commission to this complaint.

WHEREFORE, Plaintiff prays that the Court grant such relief as may be appropriate, including injunctive, orders, damages, cost, and attorney's fees.

By:"s/_____".
PLAINTIFF'S SIGNATURE

Dated: January 26, 1996

_____

In some types of actions, you are entitled to a trial by jury. However, you lose your rights to a jury trial if you do not ask for it early enough.

If you want a jury trial you should write "JURY TRIAL DEMANDED" on the front page of your complaint to the right of the caption, above or below the word "complaint", You can also demand a jury trial within 10 days of service of the defendant's answer. S Rule 38(b) of the Federal Rules of Civil Procedure.

UNITED STATES DISTRICT COURT

Southern DISTRICT OF New York

Blanche Hutcherson
v.

SUMMONS IN A CIVIL ACTION

CASE NUMBER: 95 Civ. 10074

The City of New York, New York
City Department of Human Resources

TO: (Name and Address of Defendant)
Chuck Waxman, IS Personnel Director
The City of New York
New York City Department of Human Resources 10th Floor
250 Church Street
New York, N.Y. 10013

YOUR ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

PLAINTIFF'S ATTORNEY (name and address)
Pro Se Blanche Hutcherson
341 West 24th Street Apt. 4H
New York, New York 10011

(name not legible)
CLERK

Nov 29 1995

"s/_____".
BY DEPUTY CLERK
(signature not legible)

DECLARATION IN SUPPORT OF REQUEST TO PROCEEED
IN FORMA PAUPERIS

UNITED STATES DISCTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Blanche Hutcherson
(petitioner/plaintiff)

NOV 15 1995

v.

The City of New York, New York City
Department of Human Resources
(respondent(s)/defendants(s)

Thomas P. Green Judge
"s/_____".

_____Judge
(not legible)

I, Blanche Hutcherson, am the petitioner/plaintiff in the above entitled case. In support of my motion to proceed without being required to prepay fees or costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore, that I believe I am 27 entitled to redress.

I declare that the responses which I have made below are true.

1. If you are presently employed, state the amount of salary wage per month, and give the name and address of your last employer. **YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCAR-**

CERATED.

---

2. If you are **NOT PRESENTLY EMPLOYED**, state the date of last employment and amount of the salary per month which you received AND how long the employment lasted. YOU MUST ANSWER THIS QUESTION EVEN IF YOU ARE INCARCERATED. IF YOU HAVE NEVER BEEN EMPLOYED, SAY SO. Last employment 12/31/92, Monthly salary $2,374.78, Employed from 4/1962 to 12/1992.

---

3. Have you ever received, within the past twelve months, any money from any of the following sources?

a. Business, profession, or form of self-employment?: YES___NO___

b. Rent payments, interest, or dividends? YES___NO___

c. Pension, annuities, or insurance payments? YES_x_NO___

d. Gifts or inheritances? YES___NO___

e. Any form of public assistance YES___NO___

f. Any other sources? YES___NO___

"RECEIVED NOV-8 1995
PRO SE OFFICE
(names are not legible,
but did have a signature)

By: "s/_____".
Allison Tull

If the answer to any of the questions in part three is yes, describe each source of money and state the amount received from each during the past nine months.

Pension $1,470.85.

4. Do you own any cash or do you have money in a checking or savings account?

YES__x__ **NO**____ (Including any funds in prison account(s)

If the answer is yes, state the total value owned. Checking $400, Money market $2,150.00. Chase Manhattan secured loan $13,000. I borrowed against this money to buy a co-operative. Four years to pay loan off.

5. Do you own any real estate, stock, bond, notes, automobiles, or other valuable property (including ordinary household furnishings and clothing)?

YES__x__ **NO**____

If the answer is yes, describe the property and state its approximate value. Refrigerator $1,000, Stove, $500, Table 4 chairs $125, Two winter coats $600. Other clothing from Thrift Shops.

Time sharing $7,000 Stanford, N.Y.

Mutual Funds:

IRA Gabelli	$4,120.00
IRA Fidelity	$5,200.00
Dreyfus	$7,500.00
AT&T	$2,000.00

6. List the person(s) who are dependent upon you for support, state your relationship to those person(s) and indicate how much you contribute toward their support at the present time.

---

7. If you live in a rented apartment or other rented building, state how much you pay each month for rent. Do not include rent contributed by other people. ($490.00)

---

8. State any specific financial circumstances which the court should consider in this application. (I am paying off $13,000 loan to Chase Manhattan bank in the next four years. I have paid approximately $6,000 in dental bills this year.

I understand that a false statement or answer to any questions in this declaration will subject me to the penalties for perjury.

I declare under penalty of perjury that the forgoing is true and correct.

Signed this 8 day of November, 1995.

"s/_____".
(signature)

STATE OF NEW YORK, EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

EXEC. LAW ART. 15)
SDHR NO.
1A-E-A-92-2302262-A

x _____ x

(State Division of Human Rights on the Complaint of)

Blanche Hutcherson — Complainant

- against –

The City of New York City: New York City — Respondent

x _____ x

ADEA: Federal Charge No: 16G930165

I, Blanche Hutcherson, residing at 306 West 18th Street #5d, New York, NY 10011 Tel No. (212) 691-4210 H, (212) – charge the above-named respondent whose address is 271 Church Street New York, NY, 10013 with an unlawful discriminatory practice relating to Employment in violation of Article 15 of the Executive Law of the State of New York (Human Rights Law) because of Age.

Date most recent or continuing discrimination took place 11/12/92.

The particulars are:

1. I am fifty-six years of age (DOB 5/29/36)

2. I have been working with the above-named Respondent since April 16, 1962. My present title is Supervisor. My time, attendance and work performance have always been satisfactory.

SDHR NO: 1A-E-A-92-2302262-A FEDERAL CHARGE NO: 16G930165

3. On October 19, 1992, I was unjustly brought up on charges by Beverly Moran, Director, late 40s, for untrue incidents that occurred before Ms. Moran started her employ at the Yorkville Center.

4. On November 5, 1992 and on November 9, 1992, I wrote up two employee who was under my supervision for insubordination and was threatened by Ms. Moran. She informed me that if another employee walks into her office to complain about me, I could lose my job and my pension or could be suspended without pay.

5. On November 13, 1992, I was given a threatening memorandum by Ms. Moran because I wrote up one employee under my supervision for insubordination. Maria Martinez, ESIII, and Mona Clark , ES III suggested that I retire. These two individuals are younger than I am.

6. I am 56 years of age. Based on the foregoing. I charge the above-named Respondent with unlawful discriminatory practice by denying me equal terms, conditions and privileges of employment because of my Age, in violation of the Human Rights Law of the State of New York Section 296.

"I have not commenced any other civil or criminal action, nor do I have an action pending before any administrative agency under any other law of this state based upon this same unlawful discriminatory practice."

I hereby authorize SDHR to accept this verified complaint as a filing to the Age Discrimination in Employment Act. (ADEA) as amended (covers ages 40 years of age or older in employment). SDHR covers ages18 years of age or older in employment.

STATE OF NEW YORK
COUNTY OF NEW YORK SS:

"s_____".
Signature of Complainant)

Blanche Hutcherson, being duly sworn, deposes and says: that he/she is the complaint herein; that he /she had read (or had read to him/her the foregoing complaint and knows the content thereof; that the same is true of his/her own knowledge except as to the matters therein stated on information and belief; and that as to those matters, he/she believes the same to be true.

Subscribed and sworn to before me this 16th day of November, 1992

"s/_____".
Signature of Complainant)

"s/_____".
DECTOR RODRIGUEZ
Notary Public State of New York
(Other information not legible)

Complaint: ADEA (INT. 3)) 3 or 2) /jac 11/16/92

STATE OF NEW YORK:
EXECUTIVE DEPARTMENT
STATE DIVISION OF HUMAN RIGHTS

EXEC. LAW ART. 15
SDHR NO:
9D-EA-92-230
2262A

x _____ x
(State Division of Human Rights on the Complaint of)

Blanche Hutcherson — COMPLAINANT

- against -

The City of New York City: New York City Human Resources Administration — RESPONDENT

New York City Department of Personnel — Nec. Party
New York City Civil Service — Nec. Party

Federal Charge No: 16G930165

DETERMINATION AND ORDER AFTER INVESTIGATION

On November 16, 1992, Blanche Hutcherson filed a verified complaint with the State Division of Human Rights charging the above-named respondent with unlawful discriminatory practice relating to Employment, because of Age in violation of the Human Rights Law of the State of New York.

After investigation, and following review of related information and evidence with named parties, the Division of Human Rights has determined that, insofar as respondent The City of New York; New York City Human Resourses Administration is concerned, there is NO PROBABLE CAUSE to believe that the said respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determinaton is based on the following: Complainant has failed to establish that the disciplinary charges and harassment she alleges were in any way related to her age. Additionally, no damages to the Complainant resulted from the charges she complains of, since she retired before any resolution of those charges was researched.

The complaint is therefore ordered dismissed and the file is closed.

Any party to the proceeding may appeal this Determination to the New York States Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Petition and Notice of the Petition must also be served on all parties including General Counsel, State Division of Human Rights, 55 West 125th Street, New York, NY 10027. DO NOT FILE THE ORIGINAL PETITION AND NOTICE OF PETITION WITH THE STATE DIVISION OF HUMAN RIGHTS.

PLEASE TAKE FURTHER NOTICE that a complainant who seeks state judicial review and who receives an adverse decision therein, may lose his or her right to proceed subsequently in federal court by virtue of Kremer vs. Chemical Construction Co., 456 U.S. 461 (1982).

DATED AND MAILED:
June 26 1995

STATE DIVISION OF HUMAN RIGHTS

"s/_____".
PAULA G. SAWYER
Regional Director

Determination: NPC NON-TITLE VII and NON-ADA
(DET. 18 – 08/92) TSP/tsp
06/22/95

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

New York District Office

7 World Trade Center, 18th Floor
New York, NY 10048-1102
Phone: (212) 748-8500
TDD: (212) 748-8399
General FAX: (212) 748-8464
Legal FAX: (212) 748-8465

August 21, 1995

Charge No: 16G-93-0165

Blanche Hutcherson
341 West 24th Street, Apt. 5D
New York, NY 10011

NYC Human Resource Administration
Personnel Director
271 Church Street
New York, NY 10013

DETERMINATION

This is to inform you that, we have concluded our review of the New York State Division of Human Rights (NYSDHR) findings in the above referenced charge. Substanital weight has been accorded to the findings of the New York State Division of Human Rights NYSDHR, which you previously received.

Having examined New York State Division of Human Rights' findings and the record presented, I conclude that the evidence obtained during the investigation does not establish violations of the statutes.

If the charge was filed within 180 days of the alleged discrimination (300 days in states with a state age discrimination law), charging party may sue under the ADEA for recovery of backpay, an equal amount as liquidated damages, appropriate make-whole or injunctive relief, and attorneys' fees and court costs.

A lawsuit under the Age Discrimination in Employment Act ordinarily must be filed within 2 years of the date of discrimination alleged in the charge. On November 21, 1991, the ADEA was amended to eliminate this 2 year limit. An ADEA lawsuit may now be filed any time from 60 days after a charge is filed until 90 days after receipt of notice that EEOC has completed action on the charge. Because it is not clear whether this amendment applies to instances of alleged discrimination (occuring before November 21, 1991), if charging party decides to sue, a lawsuit should be brought (within 2 years of the date of alleged discrimination and within 90 days of receipts of this letter, whichever is earlier), in order to assure the right to sue.

The lawsuit must be filed in U.S. District Court. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept, where the employment would have been, or where the respondent has its main office.

If the charging party cannot afford or to obtain a lawyer to represent him/her the U.S. District Court having jurisdiction in the case may, at its discretion, assist the party in obtaining a lawyer. If (s)he plans to act the U.S. District Court to help find a lawyer, (s)he must make this request of the court in the form and manner it requires. The request to the U.S. District Court should be made well before the end of the time period mentioned above. A request for representation does not relieve the party of the obligation to file a lawsuit within the above mentioned time frames.

If suit is filed, send a copy of the court complaint to the office where the charge was filed within 10 days after filing. The file will then be preserved. Generally, EEOC's rules call for this charge file to be destroyed two years from now unless EEOC is notified that suit has been filed in U.S. District Court.

On behalf of the Commission:

"s/_____".
Spencer H. Lewis, Jr.
District Director

Charging Party Copy

CASE INFORMATION IN THE WAVERLY CENTER

On one occasion James Pyatt, Director, followed me into the back elevator in the center at 6 PM when I was leaving to go home. My flex hours were 10am to 6pm. I was surprised to see him because he was never at the elevator when I went home. I went to one corner of the elevator until I was on the first floor. I said nothing to him while in the elevator.

On another occasions he followed me down the staircase when I was going home. On several occassions he stared at me when I clocked out to go home. He would be standing in the application section watching me as I went out the center to go home. I feel because he could not get close to my body he decided to treat me less than human by using his position power. By character assasination, (as he did in the first hearing) intentional infliction (by using the people he promoted to attack me) and emotional distress (by all the stress placed on me while I tried to do my job).

He came to my unit on a daily basis when he was director in the Waverly Center. He talked to Antonio Rodriguez, a worker in my unit, every day. Antonio was an ESIII. He started (JAMES PYATT) that he was closer to Antonio Rodriguez than anyone else in the Waverly Center.

One day Antonio Rodriguez took two hours for lunch. When he returned to the unit I aksed him where had he been. He stated to me "NONE OF NONE FUCKING BUSINESS". The workers in the unit laughed, but I was so shook up I just sat at my desk for twenty minutes. I went to James Pyatt, Director, and told him what had happened. He put his hands up to his face and laughed in my face. He brought no action/against Antonio Rodriguez. In fact the next day I saw James Pyatt and Antonio Rodriguez laughing on the floor together. I always saw the two together on the floor on many occasions. Antonio Rodriguez open

up a knife when I was talking at the desk of another supervisor. I asked him to come to my desk. I told him that he should not open the knife with several blades in the office. He told me that he had a six inch blade knife and would bring it to work because it was legal. Once he told me I would live to be seventy years old. Any worker that I saw James Pyatt with attacked me. People that liked me James Pyatt would turn against me. He used numerous Spanish workers as well as Black workers to attack me.

Workers smoked in my cubicle although I had a sign stating NO SMOKING. Workers from the second floor would be at my cubicle smoking. I got sick one afternoon and could hardly breathe. I went to C.P. Schooler, M.D., 425 West 23rd St. N.Y.C. 10011, Telephone number 243-1224. He told me my illness came from smoking, and gave me penicilliums to take for three days I couldn't swallow during this period. After I took the penicillium, my throat was nearly back to normal, and I went back to work. The workers continued to smoke and I was constantly complaining to Harold Genee, Director, during this period. (Harold Geene replaced James Pyatt as director) James Pyatt became field manager). The director had a meeting and the administrators were smoking at the meeting (in a room with no windows). All of the people who did the horrible things to me have been handed promotions by James Pyatt. James Pyatt stated to me in the Waverly Center once "Do You Know How The Mafia Operates?"

In 1989 I gave a subordinate who never completed her work on a montly basis and unsatisfactory evaluation. She failed to complete other assignments and meet deadlines. She was friendly with Vicky Pitchford, James Pyatt's girlfriend who he handed a promotion with only 6 years in the department to become an administrator. My subordinate came to me one day and said "YOU ARE GOING TO GET IT". That is when Vicky Pitchford made up lies and had me (petitioner) brought up on disciplinary charges. Ruth Green (now deceased) was always in my unit causing problems. She was at my cubicle with James Pyatt. Ruth Green

stated to me "You should leave and go home in the rocking chair with your cat". She was James Pyatt's assistant in the office. She made numerous remarks about me (petitioner). She stated that I should go back South and do something with the mules and cows.

In 1989 on the first disciplinary charges Vicky Pitchford lied so much unitl I was sick reading what she stated. She stated that she was my (petitioner) immediate supervisor, that I swung my hands after. She never ever covered me, and I never swung at her. The reason she lied was because she charged into my cubicle when my immediate supervisor (Lindsay Watson) was present, and decided to turn her rear end up in my face. She told me what I better do with her rear end facing my face. She had no reason to be in my cubicle at all that day. The director was on vacation when this incident happened.

Another Spanish worker, William Santiago, ESTIII, came to my cubicle when James Pyatt was at the office and told me anyone 50 years old should leave the center.

Once I went to a training session on 16th Street held by Mr. Blaustine and Mr. Pyatt. I went to the meeing held by Mr. Blaustine. When I returned to the Waverly Center the next day. Lindsay Watson, PAAI, had gotten a key from the director's secretary, and had gone into my cubicle and looked at all my personal possessions. She stated she was looking for a 909R which is kept by the unit clerk all the time. The 909R was with the unit clerk that day. She wrote a memorandum to me and left it on my desk stating she would write me up for hiding the 909R. This was deliberately done by my immediate supervisor (Lindsay Watson) because I didn't go to the meeting held by James Pyatt. Lindsay Watson held a meeting with my group, and talked about me with my workers while I was at the meeting. One worker of petitioner would always come and tell me (petitioner) what was said in their meetings with administrators, and most of the time they talked about me (petitioner) in a negative

manner.

On numerous occasions I would be working very hard covering two groups, and look up and would see Mamie Mathews, Al Salerno (now deceased) Lindsay Watson (All administrators handed promotions by James Pyatt) staring in my face watching me work and they were laughing.

> After the first hearing the attorney assigned told me I should leave the Waverly Center. I was told I needed counseling at the hearing held at 250 Church Street.

I went to counseling at 27th Street, Park Avenue, N.Y.C. with Jeanne Mertz, Clinical coordinator, and Pamela Azar, Intern (Social Jeanne Mertz stated I was athreat to the people I was owrking with, and Jeanne Mertz stated it's a wonder I (petitioner) hadn't committed suicide, because of the things that had happen to me, and stated that my experiences looked like sex harassment. I (petitioner) stated that she believe in God.

After I (petitioner) put in may transfer to the Yorkville Center, and was notified the date of my leaving Mr. Famosco, Director, called me into his office and asked me did I know anyone in Yorkville. I stated no. I asked why did he ask that question. He stated had I known anyone my transfer wouldn't go through.

Before leaving the Waverly Center, Cessie Walker, PAAIII (assistant to the office manager and director) came to my cubicle to talk. I told her I didn't want to talk because she had never talked with me about anything. She forced herself (petitioner didn't invite her) into my cubicle and began talking. She stated to me "YOU WON'T MAKE IT AT THE YORKVILLE CENTER". Something went through me, and I said to myself will the same thing happen to me that happen to me at Waverly? It did happen again.

When I arrived at the Yorkville Center Mrs. Darden, Office Manager, Talked with me and stated that she would promote me to PAAIII. The next thing I heard, James Pyatt was coming to the Yorkville Center to discuss the BEGIN program, howeve, he talked about eveything but the BEGIN program. I wrote a memoramdum to Barbara Sabol, Administrative Commissioner. He came to the Yorkville Center frequently after I arrived. I (petitioner) had no problems with staff until James Payatt arrived. The atmosphere changed as soon as he came. Mrs. Darden began to dislike me, and workers began to attack me in the center. Deborah Kellman would come laughing in my face tellin me "James Pyatt is coming". James Pyatt had handed her a promtiong in the Yorkville center in 1991. Mrs. Darden had a meeting with me and told me that she was going to get promoted to director. When I reported problematice workers to Mrs. Darden she wouldn't do anything, but laugh with the workers.

The first thing Deborah Kellman siad when she was placed over me (petitioner) by James Pyatt. "You will do ths, and you will do that in a harsh voice. She was a vicious person and knew ho to keep workers fighting, and hurting one another. One day before I clocked in to work, Deborah Kellman had two ESIIIs, Daisy Cotto and Theresa Toro fighting. Daisy Cotto had scratches all over her face, and went to Bellevue Hospital emergency room to be taken care of. This incident was not reported by management because Deborah Kellman caused the fight over Daisy's Cotto's time card. She had workers against workers. Supervisors hurting other supevisors.

Deborah Kellman told Beverly Moran, Director, lies about me. And becasue I (petitioner) gave Deidre Gant, subordinate of petitioner) an unsatisfactory evaluation for the first three months under me. When she came to work she didn't do her work, and was out grequently with family problems. She was always in Beverly Moran's office. Beverly Moran always entertained her, and she failed to do her work.

After Deborah Kellman caused me to be brought up on disciplinary charges. Deborah Kellman, and Darcia Pickett (Unit Clerk that didn't work either) came to my desk laughing in my face for an half hour or more about what she had done during working hours. I was hurt by Deborah Kellman's misconduct. The last day at the yorkville Center the workers were laughing. Maria Martinez (petitioner's subordinate) stated "retirement time over and over approximately all morning into the afternoo. It was awful administrative workers were rejoicing as she made the statement.

Deborah Kellman was seen by me coming from lunch at 3PM and some of the supervisors she liked could go to lunch any time they wanted. I couldn't tell Beverly Moran, Director, because she would frown in my face.

To: Gale Godwin, Director

From: Blanche Hutcherson, Supervisor

Subject: Hilary Collins, Center Based Trainer

On 2/11/91 Mr. Collins, CBT, came to my desk around 4:15pm when I was reviewing a case to be signed off. I had several cases piled up on my desk to be signed off. Mr. Collins knocked off one case on the pile, and stood at my desk with an eight inch blade knife in his hand with the blade turned towards me. He tapped on my desk with the knife twice, and looked at me.

I (petitioner) told heim if I wrote to Central Office (main office) he would lose his job. At this point he walked away from my desk. I have a witness to htis incident. In fact, there were workers sitting in my group when this happen, but they failed to come forward.

I could hardly believe my eyes since this is suppose to be a top adminis-

trator. What is left for subordinates to do when they see this behavior? I (petitioner) resent being threaten in this manner while working at my desk doing my job. I have a right to work in HRA without being in an atmosphere of this nature.

2/7/91 ms. Collins called Mrs. Kellman, and stated to her that I told him not to call on my telephone anymore. This is a lie. I stated to Mr. Collins that he would have to call Awilda Guadalupa back because she was on the telephone talking to someone.

I have had several situations where Mr. Collins would yell at me, and I said nothing, but I feel he has come to a breaking point where something should be done.

cc: Mrs. Bailey, Shop Steward

"s/_____".
Blanche Hutcherson

#15

Note: EXHIBIT 3/11/97, PLTF at deposition process.

MEMORANDUM BY WITNESS

Date: 38/91

To: Whom it may concern

From: Hassan Adul-Hamid

Subject: Incident that took place on 2/11/91

Please be aware that on the above date my supervisor, Ms. Hutcherson, and I were sitting at our desk working when Mr. Collins

walked over. it just so happened that he had a carving knife in his hand at the time.

He then said some words to my supervisor, Ms. Hutcherson, and knocked some cases over which were piled on her desk, and some words were said between them. Mr. Collins began to stick the knife in some cases which were in the basked, some words were said agian, and Mr. Collins walked away from the desk.

MEMORANDUM

Date: June 11, 1991

To: Ms. L. Darden, DED

From: Ms. B. Hutcherson, PAAI

Subject: HARASSMENT

Re: Ms. D.R. Kellman, DDE
Undercare Group 1

The above administrative assistant to the office manager gave the 18 and 19 year old project from Burt Blaustein, Deputy Director To Support, due 6/7/91 to Awilda Guadalupe, ESIII (1-3), and failed to give to the supervisor in charge. As of this date Ms. Kellman, DDE, has not given the memorandum from Mr. Blaustein to me. When Salina Tucker, Secretary to the director (Gale Godwin) had this project I had no problems. She cam to me with the project, and it was completed on time.

On 6/6/91 Mrs. Kellman ran around on the floor asking for the 18 and 19 year old project. I stated to ehr twice that she never gave me

anything on the 18 and 19 year old. Awilda Guadalupe told me Ms. Kellman gave her the memorandum. Ms. Harris, 1-4, had a case on the list, and I was informed today that no one told her abut an 18 or 19 year old. This is a lack of cooperation on Ms. Kellman's part, and the obstruction of the work process. I left the memorandum that Awilda Guadalupe gave me on Friday (6/7/91) in the basket on my desk. On 6/10/91 the memorandum from Mr. Blaustein had been taken. I asked Awilda if she took the memorandum from the basket, and she stated "No" that Mrs. Kellman took the memorandum from the basket. I cannot do my work effectively if Mrs. Kellman continues to obstruct the work process in my unit. Mrs. Kellman has no right to go into my basket and take anything off me desk without my knowledge specifically if I am coming to work that day, and it is importatnt work to be done with a deadline date.

Ms. Kellman is a person who cannot resolve problems, but creates problems becasue she cannot make constructive decisions. ms. Kellman claims I perpetuates a negative attitude she is talking about herself. In fact, Ms. Kellman projects a negative attitude on a daily basis. you can see by the workers who have almost been fighting, and in fights since Ms. Kellman was assigned to this unti.

I cannot meet mandated deadlines if the supervisor's work is handed to my subordinates without my knowledge. And the workers are in Ms. Kellman's office as much as they are in the unit.

I will continue to rebuttal any memorandums written by Ms. Kellman who obstructs the work process, and tell lies in her memorandums to appear like she is innocent of everything.

Ms. Kellman still thinks she is supervisor, and acts more like a supervisor than and administrator. Maybe she needs more training to improve her skills, and learn what an administrator is supposed to do.

Just for the record Ms. Kellman has not learned how to spell my name correctly yet. HUTCHINSON is incorrect the correct spelling is HUTCHERSON.

cc: G. Godwin, Director
Personnel folder

"s/_____".
Blanche Hutcherson

MEMORANDUM

DATE: June 11, 1991

To: Ms. D. R. Kellman, D.D.E.

From: Ms. B. Hutcherson, PAAI

Subject: INAPPROPRIATE CONDUCT OF D.D.E.

Please be advised that ths is a rebuttal to your memorandum dated 6/6/91. Again you are lying about what I said to Ms. Geathers. I told all the workers in Group 1 to bring pad and pencil to the meeting on 6/6/91 at 10A.M. because I was informing all the workers about clean up day to purge their files June 26, 1991. Gloria Geathers! stated "You never talk about anthing in your meetings" and this is when I stated to Ms. Gethers "iam the one to evaluate you." I never told Gloria Gethers that if she didn't bring pad and pencil that I would put this in her evaluation. You and Gloria decided to make this lie up. Gloria Gethers interrupted my meeting stating to me "YOU ARE MEAN, AND EVERYBODY KNOWS IT". Gloria Gethers can only speak for herself. She cannot speak for two hundred people at Yorkville Center. I couldn't start my meeting until Gloria Gethers" stopped talking about be in the meeting. You supported Gloria's behavior.

If you le me be supervisor instead of you trying to be both supervisor and administrator the Unit will function perfectly. You stated that I provke my workers, but you failed to state in what way I provoke my workers, and the names of the workers I provoke. You cannot continue to make blank statements with no facts to back up what you are trying to say.

You state to me in your office that you knew nothing about Gloria Geathers taking my picture. Your memoradum gives me detail informationon the picture taking by Gloria. No one in the history of HRA takes a supervisor's picture when she is at her desk working without her permission. Gloria took the picture in the morning after I had the Unit meeting on May 23, 1991, Ms. Geathers has not learned hwo to sit at her desk adn work. In fact she has been a trouble maker ever since the CBT (Hilary Collins) started coming to my unit talking to Gloria Geathers. I never wrote up any worker because you were part of the problem.

You caused Daisy Cotto (1-5) to say she would slap me in the face. When I was signing the 344 (TIME SLIP) of Daisy Cotto. She ran into your office several times to complain about me. And you came out to the unit and stated "let the director make the decision on the 344. This made Ms. Cotto think that I couldn't write undocumented sick leave on her 344. She had no doctor's note. You should have stayed in your cubicle and said nothing.

Ms. Kellman, I find you to be an insecure, and narow minded individual also, who constatly lies on me. I have no animosity towards you because you are a PAAII, or the workers in my gorup. It is the reverse. You and the workers have animosity twoard me.

As for my becoming a DDE in none non of your business. <u>This is one of your problems minding my personal business at work</u>. You

should not continue to press your luc, but improve you skills.

You must learn or understand what team spirit is all about. Entertaining the workers in my group daily in your office is not team spirit. Team spirit is not Gloria Geathers, Awilda Guaadalup, Hilary Collins, and yourself!

You have stated to me that you are not going any place. I guess yo knwo you are secure no matter what type of behavior you project.

On 6/6/91 after I had my meeting with the workers in Group 1 you called me into your office and began to yell at me with the door closed continuously over fifteenminutes. Co-workers in Group 9 heard you. In fact one worker was so upset when he saw me coming out of your office he came to my desk and couldn't believe the yelling. You are the wrst administrator I have seen in twenty eight years trying to resolve problems. I had to ask why were you yelling so loud in your office before you lowered your voice. I had a splitting headace after I left your office.

I am requesting the memorandum from Mrs. Blaustein, Deputy Directory of Support, Due 6/7/91 on the 18 and 19 year olds. You have not given this memorandum to me, and the work is outstanding.

cc: G. Godwin, Director
L.M. Darden, DED
Personnel Folder

P.S. I have witnessess to Ms. Kellman's yelling in her office on 6/6/91. Ms. Kellman has been on a HIGH KEY every since she made a Provisional PAAI in March, 1991. Being nasty and yelling.
NOTE: EXHIBIT # 17 PLTF, 3/11/97 at the deposition process.

"s/_____".
Blanche Hutcherson

306 West 18th Street #5D
New York, New York 10011
July 5, 1991

Yorkville Center #19
Supervisor Group 1

Mrs. Barbara J. Sabol
Administrator/Commisioner
Human Resources Administration
Family Support Administration
250 Church Street
New York, N.Y. 10013

Dear Mrs. Sabol:

I am writing to inform you about James Pyatt, DDS. I have been under the operations of this man over five years. As director in the Waverly Center, and Field Manager of the Waverly Center. He has consistently place me in an unpleasant working condition by assigning the worst workers, and giving me the worst group. However, I have managed by working very had to get the work done.

I left the Waverly Center 12/31/90 to get away from this man because I was tired of being abused, and working hard in an unpleasant abusive situation.

I transfered to the Yorkville Center, but was unaware he was opeating this center. On January 7, 1991 he came to Yorkville to hold a meeting with the Cabinet, DDEs, and Supervisors to discuss BEGIN. He began the meeting by stating who he was, and what he could do. He bragged about how many ESIIIs he had promoted to PAAIIs, and said

the $30,000 was good. This man had deliberately made my life difficult and unpleasant under his operations. He stated he could promote and demote if people didn't do what he said. He promotes certain people if people didn't do what he said. He promotes certain people and uses these same people to manipulate and hurt people he doesn't like. You can see the memorandums that have been written about me since I have been in the Yorkville Center.

I was assigned group 1 in the Yorkville Center, and I had gotten the group trained, and for the first time June, 1991 they were able to complete their Face-to-Face Recerts by the end of the month. James Pyatt came to Yorkville on 6/27/91, and the next thing I heard that I was being removed from group 1 and assigned to group 8 effective 7/8/91. I had put in two days off in advance for 7/8/91 and 7/9/91, and no one told me as of today why I was taken from group 1. I asked the director on 7/2/91, and I am still waiting for a reply.

I don't know what type of workers are in group 8, but I hope he is not placing me in an unpleasant situation againf or abusive treatment.

He never appreciates anything I do, but will assign me all the work he can, and then try to put me down. The only way I eve receive recognition for my good work is being assigned to another group to clean up. I don't know how much more I can endure under his stressfull operations.

I know you have a busy schedule, and I hope I didn't take up too much of your time, but I had to tell someone how I have been treated in the past five years.

Sincerely,

"s/_____".
Blanche Huterson

NOTE: Deposition Exhibit
#31, 3/26/97

306 West 18th Street #5D
New York, New York 10011
June 6, 1992

Ms. Patricia Smith, Acting Deputy Commissioner
250 Church Street 4th Floor
New York, New York 10013

Dear Ms. Smith:

I am writing to you to let you know that I was called into the office of Mrs. Beverley Moran, Director, of Yorkville Center on 5/28/92, and was told that she was writing me up for disciplinary action. She showed me the yellow paper that she had started to write. Mrs. D. Kellman told Mrs. Moran that I slammed the telephone down on her. Mrs. Moran also stated that she had a memorandum that Mrs. Godwin, previous director, had that Mrs. Kellman had written about me (petitioner)

Please note Mrs. Moran had not heard my side of the story and was bringing me up on disciplinary charges. I began to tell Mrs. Moran my side of the story. I stated on 5/27/92 Mrs. Kellman passed by me in the walkway beside the office manager's office, and knocked up against me with her shoulder, and started laughing. I didn't do anything or go to the director's office because I know how cruel Mrs. Kellman can be. She lies at the blink of an eye. I was trying to ignore her behavior. She dislikes me and constantly creates problems for me. I continued to tell Mrs. Moran that Mrs. D. Kellman had written a memorandum about me, and I had asked Mrs. Gale Godwin for this memorandum. She stated that she was going to get a the bottom of everything, however, Mrs. Godwin never let me see the memorandum. This is the memorandum Mrs. Kellman brought to the attention of Mrs. Moran. Mrs. Moran Stated that she wanted to be fair to me that I should be given a chance to rebuttle this memorandum.

Mrs. Kellman was upset and Mrs. Moran had to shut her up so she could listen to my side of the story. Mrs. Kellman was so upset that she stated in front of Mrs. Moran, Director, to me. "I clock out at 5PM and if you want to meet me outside I'll beat you up" Mrs. Moran began to listen to me and what I was saying. Moran Stated in the presence of Mrs. D. Kellman at the end of the meeting that one can lose their job for hitting another employee. She stated that I could look in my personal folder the next day, however, she was out for a few days, and I haven't seen my folder yet. I told Mrs. Moran about Mrs. Kellman throwing cases on the desk next to me while I was eating on my lunch hour, and I could hardly digest my food. I told her about Mrs. Kellman yelling at me while I was sitting at her desk on one occasion in her office and people could hear her in Group 9, and the control Section from Group 1.

In this meeting Mrs. Moran stated that she wanted everyone to be professional meant. I stated "Do unto others as you would have them do unto you." Mrs. kellman stated that I said I would take her head off. She lied to compensate for her vicious attack on me in the front of the director. I stated that I wasn't going to fight anyone because this is not part of me. Mrs. Moran stated that she observed me changing at times. Sometimes I look like I am happy, and sometimes not. I have a worker under me who has threaten me the same as Mrs. Kellman. the only difference was the worker was going to beat me up in the office. I wrote her up and nothing was done. I work with some of the vicious people that I have ever met. In fact, this ESIII stated she would knock my false teeth out, beat me up, and drag me out of the office. Management said nothing about bringing this worker up on nothing. How on earth can one look happy with people vicious over you, and under you and no one being punish.

Because James Pyatt, Deputy Director to IS (Income Support), had a DDE bring me up on disciplinary charges in 1989. I feel he is the backbone on the numerous attacks toward me at Yorkville Center. He wants to force me out of HRA, and he will stop as low as it takes to get me out. Lying is his weapon because it worked before with Victoria

Pitchford, DDE, in Waverly. She fabricated outright lies on me, and got away with it because James Pyatt backed her. He will do the same for Mrs. Kellman, and I know this is wrong. He uses the women he promote to do his dirty work. Another DDE, Sally Rodriguez, stated in a meting in her office to me that if you are tired of being a supervisor you can to 250 Church Street. No meritorious increase, and you will go down as a PPPI. this sound like something Mr. Pyatt would say to me. He is always a put down of people he dislikes.

Because so much has happen to me in the Yorkville Center it appears to me that some workers are constantly conspiring to attack me, and disrespect me for no reason other than to satisfy management.

Mrs. Moran stated in the meeting with Mrs. Kellman that she heard I petitioner don't get along with people. The fact is that I am a friendly person that I don't get along with people he places over me. Because they have been cruel people.

HRA has DDEs and ESIIIs (Administrators and Supervisor's subordinates) with the same qualities. The ability to want to beat an employee. Maybe they should bring back the Civil Service System to bring honesty back to the system, and skills to the job.

Because I do not known the results of this meeting with Mrs. Moran, Director, I would appreciate any help from you. I do not want to be subjected to harassment any anyone for no reason. And brought up on disciplinary charges for something I never done. I have been working for HRA 30 years and never had I experience the things by so many different people.

Sincerely,

"s/_____".
Blanche Huterson

Deposition Exhibit
3-11-97, PLTF

MEMORANDUM

Date: September 26, 1992
To: Mrs. Beverly Moran, Director
Yorkville ISC #19
225 East 334th Street 2nd Floor
(212) 725-4113

From: **Calendar Unit**
Employment Law Division
Office of Legal Affaire

Subject: Hutcherson, Blanche

Enclose please find charges and specifications regarding the above name employee.

Please serve a copy of the charges and specifications immediately, in person, on this employee, Have the employee sign the back of the 300b form that is to be return to this office.

Additionally, have the server complete the Affidavit of Personal Service and sign before a Notary Public. Return same to this office.

Should you have any questions, feel free to contact meat (212) 274-6099
Return signed forms to:

HUMAN RESOURCES ADMINISTRATION
Office of Legal Affairs
Employment Law Division
220 Church Street, 6th Floor
New York, New York 10013
A.B.
rr

Deposition Exhibit #23
PLF 3/26/97

THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATION

In the Matter of Disciplinary
Charges and Specifications
Relating to:

Name: Blanche Hutcherson
Title: P.A.A.I.
Location: Yorkville ISC #19
Address: 306 West 18th Street #5D
New York, N.Y. 10011
Respondent

CHARGES AND SPECIFICATIONS
NOTICE OF INFORMAL CONFERENCE
NOTICE OF SECTION 75 HEARING
NOTICE OF STOP II GRIEVNCE HEARING

Madam: Hutcherson:

In accordance with Section 75 of the Civil Service Law, you are hereby notified that the Charges and Specifications relating to Misconduct and/or Incompetence detailed in Exhibit "A", attached hereto and made a part hereof, are preferred against you.

You are allowed eight (8) days for receipt of this notice to serve upon the undersigned a WRITTEN ANSWER to the charges set forth in Exhibit "A". The filing of an answer is optional.

In order to resolve these charges, and INFORMAL CONFER-

ENCE will be held before Beverly Anderson, an Informal Conference Holder, on the 28th day of October, 1992, at 10:00 a.m., at 271 Church Street 9th Floor, at which Informal conference you may appear and be represented by counsel of your own choice and/or by a union representative. You should immediately contact your union or attorney about this matter. The Informal Conference Holder shall issue a written recommendation following the conference. The Informal Conference Holder may dismiss or sustain the charges, and recommend an appropriate penalty. The following penalties may be recommended: a reprimand: a fine, not to exceed thirty (30) days pay: a suspension, not to exceed two (2) months without pay: demotion to a lower civil service title and grade: or dismissal.

If the charges are sustained, you are allowed five (5) work days from receipt of the Informal Conference Holder's recommendation to choose whether to accept the penalty, refuse the penalty and proceed with a Section 75 hearing, or elect the Grievance Procedure if you are in a title covered by a union contract with the City of New York.

If you accept the Informal Conference Holder's recommendation, you will be required to sign a waiver of your right to the procedures available to you under Sections 75 and 76 of the Civil Service Law.

If you do not accept the Informal Conference Holder's recommendation or elect the Grievance Procedure or respond within the five (5) work day allotted period, then a HEARING will be held in accordance with Section 75 of the Civil Service Law on a date to be determined at the OFFICE OF ADMINISTRATIVE TRIALS AND HEARNINGS, 6th Floor, 20 Vesey Street, New York, New York 10007. You must appear at this hearing. You may be represented by an attorney or a representative of your choice. You may summon witnesses to testify on your behalf, present other proof and cross-examine witnesses who testify against you. Your representative is required to file a notice of appearance with OATH.

The administrative law judge may recommend dismissal of the charges, or if a finding of guilt is made, the following penalties may be recommended: a reprimand: a fine not to exceed one hundred (100) dollars: a suspension without pay not to exceed two (2) months: demotion to a lower civil Service title and grade: or dismissal from the service.

If you do not accept the Informan Conference Holder's recommendation and elect to follow the Grievance Procedure within the five (5) work day allotted time period, you will waive the right to utilize the procedures available to you pursuant to Sections 75 and 76 of the Civil Service law or any other administrative of judicial tribunal, except for the purpose of enforcing an arbitrator's award, and a STEP GRIEVANCE HEARING will be held before a Hearing Officer designated by the Administrator/Commissioner of the Human Resources Administration, on a date to be determined. You must appear at this hearing. You may be presented by counsel of your own choice, or by a union representative. Please bring to the Hearing all relevant documentation in support of your appeal.

All further notices or communications addressed to you in connection with the charges will be mailed to your latest home address on record with the Human Resources Administration, unless you request in writing that the same be sent to you a t a different address.

Very truly yours,

Barbara J. Sabol
ADMINISTRATOR/COMMISSIONER
HUMAN RESOURCES ADMINISTRATION
OF THE CITY OF NEW YORK

Date served: 10/19/92

BY: "s_____".
Beverly B. Moran

Received: "s_____".
(Employee's Signature)
Blanche Hutcherson

Served by Certified or
Registered Receipt
Requested and First Class
Mail on:_____

BY: Jean Matthews
Deputy Administrator
271 Church Street, 16th Floor
New York, N.Y. 10013
(212) 274-3965

Form 300b (reverse)
Rev. 8/11/88

EXHIBIT 'A'

RE: HUTCHERSON, Blanche
SS# 245-54-6589
P.A.A. I
Yorkville ISC #19

CHARGE I

You engaged in insubordination, misconduct and conduct unbecoming an employee of the Human Resources Administration in violation of Agency Procedure 77-1, Section V-B1.

Specification I

On or about April 1, 1991, at Yorkville Income Support Center #19, Manhattan, you were abusive toward worker, Clara Centeno, when you screamed at her and told her to "just shut up and do what I tell you to do."

Specification II

On or about April 3, 1991, at Yorkville ISC #19, Manhattan, you were abusive to your supervisor, Deborah Kellman, when she gave you a case record for correction, in that you slammed the case and screamed at Ms. Kellman.

Specification III

On or about June 7, 1991, at Yorkville ISC #19, Manhattan, you stormed into the office of your supervisor, Deborah Kellman, and screamed at her when she asked you to complete Form W-25D correctly.

Specification IV

On or about July 26, 1991, at Yorkville ISC #19, Manhattan, you threatened your supervisor, Deborah Kellman, with serious bodily injuries, in that you told her "Who the hell do you think you are? I am going to come to your office and throw papers on your desk and I will take your head off your shoulders too."

Specification V

On or about December 11, 1991, at Yorkville ISC #19, Manhattan, you were abusive to worker Darcia Pickett, in that you screamed at her when she placed completed cases on you desk for you to review.

Specification VI

On or about December 17, 1991, at Yorkville ISC #19, Manhattan, you were abusive to worker M. Martinez, in that you placed

your hands on her face and told her to leave when you were discussing her work with another worker.

Specification VII

On or about May 19, 1992, at Yorkville ISC #19, Manhattan, you slammed the phone while your supervisor, Deborah Kellman, was speaking to you.

CHANGE II

You have failed to competently perform the duties of you position in violation of Agency Procedure 77-1, Section V-B2.

Specification I

The Agency repeats and realleges all Charges and Specifications above. The Agency further alleges that you are unable to perform your work as a supervisor due to your inability to communicate with both staff and management due to screaming, hostile, angry behavior.

RECEIVED
SEP 22 1992

EMPLOYMENT LAW DIVISION

THE CITY OF THE NEW YORK
HUMAN RESOURCES ADMINISTRATION
EMPLOYMENT LAW DIVISION

Subdivision 6.4.2. of the Rules and Regulations of the City Personnel Director requires that if an employee is a resident of the City, then a copy of the charges and specifications shall be served in person upon the employee. This means that personal service must be attempted at the employee's residence is s/he cannot be served at his/her work location. The rule provides that when personal service has been attempted but can not be make, or if the employee is not a resident of the City, the charges and specifications shall be service by regular mail (first class) at the last know address of the employee.

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK:
:SS.
COUNTRY OF NEW YORK:

Beverly B. Moran, being duly sworn, deposes
(Name of Server)
and says:

1. That I am employed by the HUMAN RESOURCES ADMINISTRATION

2. That on 10/19/92, I personally
(Date of Service)
served a true copy of Charges and Specifications a copy which is annexed hereto, on Blanche Hutcherson,
(Name of Employee)
by delivering to and leaving same with such person as Yorkville
(Location of Service)
ISC #19.

3. That at the time of such service, I know the person served to be

Blanche Hutcherson.
(Name of Employee)

Sworn to before me
this 19 day of October 1992.

"s/_____".
N.E. Jones
Notary Public or
Commissioner of Deeds

"s/_____".
Beverly Moran
(Signature of Server)

STAMP INDICATES:

NORM E. JONES
Commissioner of Deeds
City of New York
Commission Expires October 1, 1993

306 West 18th Street Apt. 5D
New York, New York 10011
October 22, 1992

Human Resources Administration
Office of Legal Affairs
Employment Law Division
220 Church Street 6th Floor
New York, New York 10013

Subject: Disciplinary Charges and Specifications relating to Misconduct and/or Incompetence detailed in Exhibit "A"

CHARGE I

Please see attached documents relating to misconduct, and conduct unbecoming by Clark Centeno, Deborah Kellman, Darcia Pickett, and Maria Martinez of the Human Resources Administration. The above named persons have a lot in common cruelty, very nasty, and disrespectful to me during working hours in the Yorkville Center. In fact Maria Martinez, and Deborah Kellman have threaten to give me very serious bodily injuries. Maria Martinez inside the office and Deborah Kellman outside the office after 5 P.M.

Specification I

Please be aware that I had to practically do this worker's work, and returned cases back to her for corrections nearly all of her cases. This is not a good worker. She was abusive towards me when I asked her questions about her case actions. She would go to Deborah Kellman and have her way, and Deborah Kellman always supported her, and she went into her office anytime she wanted. She was very difficult to work with because she was manipulated by Deborah Kellman. She attacked me most of the time when I asked her questions. Attached memorandum dated 4/19/92. Doc. I.

Specification II
Deborah Kellman is lying. I never slammed the case and screamed at her. I told her I would review the case. Attached memorandum regarding her behavior. Doc. 2.

Specification III
Deborah Kellman is lying again. This is not my nature, but certainly her nature to yell and scream at me. She was abusive to me in front of the workers, and manipulated all the workers in Group I against me to undermine my effectiveness as a supervisor. See Doc. #2. On one occasion she had me in her office over an half hour yelling and screaming at me. She could be heard all over the office. When I came out of her office I had a headache. I was sitting directly in front of her desk. She was extremely abusive to me. I could not go the office manager's office or the director's office to complain because they knew each other very well, and she stated to me "I know James Pyatt personally." She did most anything she wanted t me. When I went to the office manager's office or the director's office to have a conference Deborah Kellman would be looking in my face as I came out. This was not done with Ms. Godwin, director. She wouldn't try to come to the door.

I was denied Jury Duty by Deborah Kellman because she stated if I went on Jury Duty It would reflect in my evaluation. I told her this was my civic duty. I didn't go on Jury Duty, and had to ask for another appointment.

On one occasion she brought her son to work when Mrs. Godwin was director at York ville. She had a meeting with the supervisors with her son sitting in the meeting. Around 5PM I was sitting in Group 1 during my work and D. Kellman's son around 9 yeas old, came to her door and asked me was I still working. I said nothing to him because of his beahavior.

Specification IV
This statement is a lie. In fact she came to my desk while I was on my

lunch hour (12 o'clock to 1 P.M.) sitting at my desk eating, and slammed two cases on the desk next to my desk. I jumped because it frightened me. She was approximately a yard from the desk when this happened. Because of the impact of the noise I was shook up, and couldn't digest my food normally. In fact I began to bleed internally for two or three days. She left my desk laughing with some coworkers, and came to my the next day in laughter.

Deborah Kellman wrote a statement to Gale Godwin, Director, I was called into the office by Ms. Godwin about this memo. I wrote a memorandum to Mrs. Godwin requesting this memorandum Kellman wrote about me, but it was not given to me as of this date. See Doc 8.

Deborah Kellman attacked me at will, and used the workers to attack me this is why I am having problems with workers in my unit.

Specification V

Darcia Pickett is an extremely abusive person to me. In fact I rarely talk to her because she would curse me out all the time. She failed to do her work according to procedure. The mail wasn't picked up daily and processed. Forms would stay in the basket two or three days. I would leave a note on the rdesk to take work to Control for processing. Cases would be piled up 3 to 4 days on her desk while she stayed on the telephone hours at a time. Because she isn't assigned to me I don't know when she will be out. She covers workers 8/3., 8/4, and 8/5. The unit clerk in Group 7 covers workers 8/1, and 8/2. He is always polite to me, and does his work.

One day (7/28/92) she used the F_ _ _ _ word. I stated to her that vulgar language was unacceptable in the work place, and she told me to close my ear. Darcia Picket has had her son in the office on a few occasion all day.

Specification VI

This is a fabricated lie by Marie Martinez. She is the most nasty, cruel,

and vicious person I have had to work with. She disrespects me most of the time. She is insubordinate daily telling me what se is not going to do regarding her work. I reported her to Mrs. Darden, Office Manager, but she continued to attack me, and nothing was done by the administrators.

She came to my desk on several occasions screaming to the top of her voice at my desk because she didn't want to do what I asked her to do regarding her work or even listen to me. In fact she has been the one to place her hands on me. There was a daily confrontation with this worker. The came to my desk on day pointing her finger in my face, and stated she was going to knock my false teeth out, beat my up, and drag me out of the office. Lorraine Darden, Office Manager, did nothing.

Maria Martinez stated in my (petitioner) present "We are going to get her out of here". She has stated to me on several occasion in the unit. Why don't you retire?

When I (petitioner) was first assigned to Group 8 in July, 1991 she came to me and stated "We clock each other in and out". Because I wouldn't continue to let the workers do this I endured abuse.

On 7/14/92 it was very hot on the second floor because of no air conditioning. And I was talking about how hot it was on the 2nd floor. She state to me "I hope it burns up your brains".

Maria Martinez is not a good worker because she doesn't follow procedure on Fact-to-Face Recerts. She places ten or fifteen cases on my desk at a time. She does not submit cases within five days after interview when she is in the unit. On her "E" (emergency) day she scheduled clients, and complains if she has to do work on another caseload. I constantly have to ask her for her overdue work on CPCU (Central Processing Control Unit) cases.

Maria Martinez brings her two or three year old daughter to the center all day at least n three or four occasions. I got very little work from her

when her daughter came.

Marie Martinez has a habit of slamming cases on my desk. On one occasion she came to my desk with two or three cases, and slammed them down in my basket and laughed. I was shook up and bleed internally for two or three days. She refused to attend one group meeting.
(welfare client)

I (petitioner) had a PW assigned to my unit that presented numerous problems for me. He was always talking to my workers when I was trying go get work completed that was outstanding. He was seen twice massaging two workers in my unit during working hours. I had told him twice not to do this. He became abusive to me, and I asked that he be taken out of my unit. These are the workers that the agency states I can't communicate with. Most of the workers in my group know they could say anything to me and the administrators would do nothing. He massaged Maria Martinez in the unit. Maria Martinez used the f_ _ _ word daily in July, 1991. Every other sentence was f_ _ _ . She was not the only one constantly using the work in my unit.

Specification VII

This is a lie Deborah Kellman slammed her phone down on me, and yelled all the time to me.

Charge II

I have not failed to competently perform the duties of my position in violation of Agency Procedure 77-1. Section V-B2. On April 17, 1992 I (petitioner) was the only supervisor present in the Undercare Units on Good Friday. I covered all nine undercare units for emergencies, and other work.

I was kept from serving on Jury Duty twice because Lorraine M. Darden, Office Manger, for Eligibility Determination wrote a memorandum to the Supreme Court of the State of New York, 60 Center Street, Room 140, N.Y., N.Y. 10007 requesting I be given another appointment.

On 7/13/92 I was told by Beverly Moran, Director, to cover Group 3 because the supervisor was absent. I had five emergency cases to sign, open two cases, and cases that had W270s (other outstanding work). Following are the cases I signed from Group 3 workers: "B" emergencies.

CASELOAD	CLIENT'S NAME	CASE NUMBER
3-4	Peay, Andren	1125225 "E"
3-5	Lipscomb William	0334630 "E" Hotel
4-4	Leslie, Lisa	2768173
4-4	Vaughs, Stanley	Reop
3-5	Flores, Bernadett	Reop
4-4	Lewis, Ronald	Hotel "E"
3-4	Brown, Michell	Hotel "E"
3-4	Petron, Nine	4479395 "E"

I (petitioner) had work I Group 8 to sign off and "E" checks because this was pay I signed a huge volume of work. I took a record of this work because I knew Beverly Moran, Director, would discredit my work performance. Moran lies frequently about me (petitioner). Deborah Kellman laughed a week about me working so hard on this day. She came by me desk saying "E" checks, and laughing. Deborah Kellman, and Beverly Moran worked together against me in the Yorkville Center. I couldn't take the case number of all the cases because I was very busy.

I (petitioner) worked with two workers in the unit on several occasions in July, 1992 and August, 1992 during vacation time. I even processed numerous cases with dispossesses, evictions and etc.. Beverly Moran and Deborah are two big liars for making a statement about my (petitioner's) work performance. I am constantly defending my self from lies.

Specification I

I don't know how the agency can allege all the charges and specifications. I would like to know who these people are that alleges I am screaming and unable to communicate to normal people. For twenty six (26) years I was unable to scream, hostile, and showed any angry behavior. I (petitioner) worked during working hours and had no time for nonsense.

Mrs. Moran screamed at me in front of the workers in my unit and allowed the workers to talk about me like a dog in front of her and Mrs. Darden on 2/5/92 when she had a meeting with the workers in Group 8. This is one reason the workers were extremely abusive toward me, and Deborah Kellman could do no wrong in this administration. She screamed at me when I told her these workers were clocking each other in and out.

306 West 18th Street #D
New York, New York 1011
October 22, 1992

Human Resources Administration
Office of Legal Affairs
Employment Law Division
220 Church Street, 6thFloor
New York, New York 10013

Gentlemen:

I did not receive a copy of your memorandum dated September 28, 1992 until 10/19/92 after I had made three trips to the director's office (Beverly Moran) regarding these charges. It was given to me at approximately 3:45 P.M.

I want you to be informed that I was on vacation from 9/2/92 to 10/16/92 that was approved by the administration. Because I returned to work on 10/19/92 I have six working days to respond instead of the eight days sated on your memorandum dated 9/28/92.

Beverly Moran, Director, did not discuss these charges with me.

Attached is a list of charges I am bringing against the parties involved in my case.

Sincerely,

"s/_____".
Blanche Hutcherson

October 22, 1992

TO: Human Resources Administration
Office of Legal Affairs
Employment Law Division
220 Church Street, 6thFloor
New York, New York, 10013

FROM: Blanche Hutcherson, Supervisor
Yorkville Center #19

SUBJECT: Charges I am bringing against the following people:

I Clara Centeno

1. Screaming at me from the first day I was assigned as her supervisor.

2. Personal humiliation stating I am not married, single, has gray hair, and I should retire.

3. Insubordination while under my supervision.

II Deborah Kellman

1. Threatening my life in the Yorkville Center.

2. Inflicting injury to my health by slamming cases down on my desk.

3. Undermining my effectiveness as a supervisor by using subordinates under my supervision to attack me.

4. Screaming at me in the process of communicating to me.

III Maria Martinez

1. Threatening my life stating she would knock my false teeth out, beat me up, and drag me out of the office.

2. Disrespecting my daily, and failing to perform her work according to procedure.

3. Failing to accept supervision from her supervisor (Blanche Hutcherson)

4. Reading a book and painting her finger nails during working hours when she had outstanding work overdue.

IV Darcia Pickett

1. Failing to do her work by not closing cases on time, picking up the mail daily, and walking around in the office with a beeper.

2. Communication to me (petitioner) by screening when she was asked to process ome work.

3. Waling around in the office trying to pick fights with co-workers who were at their desk trying to do their work.

4. Interrupted my (petitioner) meetings with the workers by wanting to make telephone calls or had numerous people calling her at the time I gave my meetings.

MEMORANDUM

THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATION
DEPARTMENT OF INCOME MAINTENANCE
YORKVILLE CENTER
225 EAST 34TH STREET, NEW YORK, N.Y. 10016

May 30, 1991

Supreme Court of the State of New York
60 Centre Street, Room 140
New York, N.Y. 1007

Re: Blanche Hutcherson
306 West 18th Street
New York, N.Y. 10011

Dear Sir,

Ms. Blanche Hutcherson has been summoned for Jury Duty to commence on Thursday June 6, 1991.

Ms. Hutcherson is appointed to the position of P.A.A.I. with assignment to the Yorkville Income Maintenance Center at 225 East 34th Street, New York, NY 10016.

Mr. Hutcherson's position mandates responsibility for maintaining a group of workers to maintain a caseload of 800 Public Assistance Recipients. She is responsible for recertification process that enables these recipients to remain eligible for continuing grants of Public assistance, Food Stamps and Medicaid.

We, therefore, request that this Jury Duty be postponed to a later time.

Ms. Hutcherson's absence would further deprive the group and less its performance

Very truly yours,

"s/_____".
Lorraine M. Darden
Director for
Eligibility Determination

LD/mt

NOTE: (Petitioner's written statement below)

Lorraine M. Darden denied me my right to serve on Jury Duty. Deborah Kellman told me (petitioner) if I served on jury duty my evaluation would reflect same.

THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATION
YORKVILLE CENTER
225 EAST 34TH STREET, NEW YORK, N.Y. 10016

November 5, 1992

James M. Parkinson-Clerk,

U.S. District Court
Southern District of New York
Foley Sq. Centre & Pearl St.
New York, N.Y.

Re: Blanche Hutcherson
306 West 18th St. $4A
New York, N.Y. 10011

Dear Sir,

Ms. Blanche Hutcherson has been summoned for Jury Duty to commence on Monday Nov. 23, 1992.

Ms. Hutcherson is appointed to the position of PAA, with assignment to the Yorkville Support Center at 225 e. 34th St. New York,, N.Y. 10016.

Ms. Hutcherson's position mandates responsibility for maintaining a group of workers to maintain a caseload of 800 Public Assistance Recipients. She is responsible for the recertification Process that enables these recipients to remain eligible for the continuing grants of Public Assistance, Food Stamps and Medicaid.

Ms. Hutcherson's absence would further deprive the group and lesson its performance.

We, therefore, request that this Jury Duty be postponed to a later time.

Very truly yours,

"s/_____".
Sharyn Brown
Director of Eligibility
Determination

SB:mt

Note: (Petitioner's written statement below)
Again I was denied Jury Duty. This is the 2nd time. Petitioner's Constituional Rights were violated by this administration. This never happen to me in over 29 years.

PETITIONERS' LETTER

306 West 18th St. 5D
New York, N.Y. 10277

Dear Mr. Parkison
Clerk, U.S. District Court
Southern District of New York
Foley Sq. Center & Pearl Street
New York, N.Y. 10277

Dear Mr. Parkison:

I am requeting Jury Duty in the month of June, 1993 if possible.

Thank you so much.

Sincerely,

"s/ _____
Blancehe Hutcherson.

MEMORANDUM FOUND IN PETITIONER'S PERSONNEL FOLDER IN MARCH, 1997

HUMAN RESOURCES ADMINISTRATION 9/22/92

To: Calendar Unit

From: "s/ _____".
Robin Rosenberg

Re: (Blanche Hutcherson)
Employee/Respondent

(S)_____

(Please Schedule: ASAP)
Please schedule: (Loc)

ASAP	Informal Conference Hearing
_____	Section 75 Case Conference
_____	Section 75 Hearing
_____	Step II Grievance

(These are revised changes. Please make sure she is serfved by October 1st 1992 or we run into the statute of limitations. Thanks)

Note: All the informationin brackets was written in longhand.

MEMORANDUM

HUMAN RESOURCES ADMINSTRATION 8/18/92

TO: "s/_____".
R. Rosenberg

FROM: "s/_____".
Ann

RE: TEAM CHARGES FOR REVIEW

Please find attached charges for reveiw from TEAM __(5)__.

When you are finished with your review please check the appropriate box below and place in charges in the appropriate slot in my bookcase.

(Misconduct)

To: Calendar Unit
Date: 9/14/92

_____ Send charges back to team for revision.

_____ Send charges to record center for file and schedule IC.

_____ Send charges back to team for typing.

Note: Original typed disciplinary charges set to the Employment Law Division August 17, 1992.

EXHIBIT 'A'

Re: Hutcerson, Blanche
SS# 245-54-6589
P.A.A. I
Yorkville ISW #19

Charge I

You engaged in insubordination, ;misconduct and conduct unbecoming an employee of the Human Resources Adminstration in violation of Agency Producedures 77-1, Section V-B1.

Specification I

On or about April 1, 1991, at Yorkville Income Support Center # 19, Manhattan, when your worker, Clara Centano, wanted clarification on your instruction to her, you told her to "just shut up and do what I tell you to do."

Note: Changes "You were abusive toward Clara Centeno) "when you screamed at her and told her to just shut up"

Specification II

On or about April 3, 1991, at Yorkville ISC #19, Manhattan, when your supervisor, Deborah Kellman, gave you a case record for correction and tried to show you what the mistace was you slammed the case and stte to Ms. Kellman that you will look at it when you can.

Note: Changes, "You were abusive when your supervisor, Deborah Kellman gave you a case record.

"You slammed the case and screamed at Ms. Kellman."

Specifications III

On or about april 3, 1991, at Yorkville ISC #19, Manhattan, when your supervisor, Deborah Kellmanb, directed you to look at the error now, you screamed at her "I am sick of you coming over to my desk returning a case for correction."

Note: This entire statement was deleted.

Specification IV Entire statement deleted.

Specification V

On or about June 7, 1991, at yorkville ISC #19, Manhattan, you refused to follow the instruction of your supervisor, Deborah Kellman, to have your worker 01-3, complete W-25D correctly.

Note: Changes "You stormed into the office of supervisor, Deborah kellman, and screamed at her when she asked to complete form W-25D correctly.

(Petitioner's statement: You can see how they made up lies from the top administrators to the bottom making false statements in the disciplinary charges.

Specification VI

On or about June 7, 1991, at Yorkvilel ISC #19, Manhattan, you stormed in and out of the office of your supervisor, Deborah Kellman.

Specification VIII

On or about December 11, 1991, at Yorkville ISC #19, Mahattan, you screamed at Darcia Pickett, Office Aide III.

Note: Changes "You were abusive to worker Darcia Pickett, in that you screamed at her when she place completed cases on your deske for you to review.

Specification IX

On or about May 13, 1992, at Yorkville ISC #19, Manhattan used abusive language towards your supervisor, Deborah Kellman.

Note: Petitioner never used abusive languae it was the administrative staff that used abusive language.

Specification X

On or about May 19, 1992, at Yorkville ISC #19, Manhattan, you slammed the phone while your supervisor, Deborah Kellman, was speaking to you.

Note: Deborah Kellman yells all the time, and I (petitioner) never ever slammed the phone down on her.

THE FOLLOIWNG ARE COMPLETE CHANGES TO THE DISCIPLINARY ACTION BY THE LAW DEPARTMENT:

Specification VI

On or about December 17, 1991, you were abusive to worker M. Martinez in that you placed your hands on her Face and told her to leave whne you were discussing her work with another worker.

Charge II

You have failed to competently perform the duties of your poistion in violation of Agency Procedure 77-1, Section VB2.

Specification I

The Agency repeats and alleges all charges and specifications abouve. The Agency further alleges that you are unable to perform your work as a supervisor due to your inability to communicate with both staff and management due to screaming, hostile, angry behavior.

Note: The Law Department Divison continued the lies in their changes. From their statements all the employees/were "saints except Blanche Hutcherson.

LETTER

306 West 18th St. 35D
New York, New York 10011
December 15, 1992

Ms. Judith Berek
Human Resources Administration Office of Personnel Services\
271 Church Street
New York, N.Y. 10013-34006

Dear Ms Bereck:

I received your letter dated 12/14/92 from the director at 4:25 P.M. Pleased send any informaton to my home in the future regarding retirement.

Beverly Moran, Director, opened my envelope before I saw it, and told my co-workers what was in the envelope before I saw it and read it (letter). I have no protection when mail is addressed to me coming into the Yorkville center. If you wanted everyone to know what was in the brown envelope you would have not addressed it to me. This was information for me not the entire office. I resent this action by Beverly Moran. She had the nerve to place a note in the envelope (see attached) for me. This action is extremely unprofessional by this director.

Thank you so much for infoming me that I am deemed eligible to participate in the early retirement incentive program, base upon my seniority.

Sincerely,

"s/ _____
Blance Hutcherson

PS. Please not Deborah Kellman yelled across the floor ot the supervisor in Group 5, and stated "I won't have to see her in January, 1993. A Spanish co-worker (Mona Clark) came to my desk with a piece candy laughing. They were aware of what was in the envelope before I read your statement. Please send future correspondence to my home address.

LETTER FROM JUDITH BEREK

THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATION

DEPARTMENT OF SOCIAL SERVICES
OFFICE OF PERSONNEL ADMINISTRATION
OFFICE OF PERSONNEL SERVICES
271 CHURCH STREET
NEW YORK, NY 10013-3406

BARBARA J. SABOL
Administrator/Commissioner

Judith Berek
Executive Deputy Administrator

RE: ELIGIBILITY TO PARTICIPATE IN EARLY RETIREMENT PROGRAM

DEC 14 1992

BLANCHE HUTCHERSON 225-54-6589
0533 IS Field Operations
496-DPA4 WC-19 Yorkville

Dear Ms. HUTCHERSON:

This is to infom you that you have been deemed eligible to participate in the early retirement incentive progrma, based upon your seniority ranking.

In order to continue you health insurance coverage into retirement,

please complete the enclosed "Retire Health Benefits Application" and return it to:

HRA/DSS Employee Benefits Division
Office of Personnel Services (OPS)
271 Church Street, 3rd floor
New York, N.Y. 10013-3406

If you have any questions regarding the Health Benefits form, you may call (212) 274-3478 for assistance.

For Management Benfits Fund (MBF) members, we have also enclosed an application to continue your MBF coverage into retirement. If applicable, please complete this application and submit it to the Employee Benefits Division at the above address.

Good luck on your retirement.

Sincerely,

"s/ _____
Judith Berek

BEVERLY MORAN, DIRECTOR PLCED THE FOLLOWING NOTE IN THE ENVELOPE WITH THE ABOVE LETTER VERIFYIING SHE HAD OPENED PRIVATE MAIL OF PETITIONER.

Beverly Moran's Note

HUMAN RESOURCES ADMINISTRATION 12/15/92

To: (Ms. Hutcherson, Grp.08)_____
(Supervisor)

From: ("s/_____".
Signature of Director

Beverly Moran's Note

HUMAN RESOURCE ADMINISTRATION 12/15/92

To: (Ms. Hutcherson, Grp.08)_____
(Supervisor)

From: ("s/_____".
Signature of Director

COMMENTS:

(Please let know by Wednesday 12/16/92 if you plan on retiring on 12/31/92.)

Form W-218
10/83

Note: This memorandum was written in long hand.

COMMENDATIONS

THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATION
INCOME AND MEDICAL ASSISTANCE ADMINISTRATION

BARBARA J. SABOL
Administrator / Commendations

ALLEN KRAUS
Deputy Commissioner
Income Maintenance Program

May 15, 1990

Dear Ms. Hutcherson:

You and your colleagues in Group 13 are trailblazer in changing New York City's welfare system. Together you referred more clients tp OES Office of Employment Services) programs last month than any other group at the Waverly Center. Your efforts to enroll your clients in BEGIN have helped several of them secure day care and begin employment and have helped others builde the skills necessary to accomplish this. You have served as the "point person" in the BEGIN program.

We want to bring IM and OES closer together to encourage more clients to take the steps necessary to move from welfare to work. Your words of encouragement and guidance to your clients have already made a difference. The success you have demonstrated and your continuing efforts are critical in this effort..

Thank very much!

Sincerely,

DEPOSITION EXHIBIT
#27, 3/26/97)

"s/ _____
Allen Kraus

MEMORANDUM (COMMENDATION)

THE CITY OF NEW YORK
HUMAN RESOURCES
ADMINISTRATION

Date: 7/22/82

To: H. Cohen, Director
R.O'Harra, Office Manager

From: "s/ _____".
D. Smith, AOM (Assistant to Office Manager)

Subject: RE: BLANCEH HUTCERSON, SUPV.

I am submitting this memo as a commendation for Ms. Hutcherson's performance as a Supervisor of Group 9.

She shows a sense of her supervisory responsibility in working towards meeting the goals of the Agency, regarding the completion of recertifrications. She is working with an acute shortage of staff in her unit. In addition to her own duties, she has serviced clients herself who have been into the center with emergencies.

She also shows a keen sens of responsibility towards her immediate supervisor. She provided me with an up to date activity report. As a covering supv. this was important for me to have.

Upon learing I needed statistics for a call-in report she volunteered to obtain them from her group for me. She has made contigent plans for handling her present workload problems that are due to staff shortages.

Ms. Hutcherson has shown to me that she has the potential to be considered ofr a promotion should the opportunity arise.

cc.: B. Hutcherson

COMMENDATION MEMORANDUM

THE CITY OF NEW YORK
HUMAN RESOURCES
ADMINISTRATION

Date: 1/17/79
TO: BLANCHE HUTCHERSON SUPVR, CLERK-IM
FROM: RICHARD O' BRIEN, DIRECTOR "s/ _____".
SUBJECT: COMMENDATION

I would like to commend you and thank you for your decision to remain during the crisis that pervailed at Amsterdam on 12/26/73. Working for a service agency such as ours is never easy. Crisis situations develop on a regular basis. It is a sign of maturity and understanding of the work of this agency that you responed to the

crisis with a spirit of professionalism. Again, I wish to commend and thank you for your working on that day.

A copy of this commendation will be placed in your personnel folder.

ROB: ag
CC: PERSONNEL FOLDER

COMMENDATION GRAMMERCY WELFARE CENTER

February 8, 1965

TO: Mr. Isidore Cooper
Administrative Supervisor
Lower Manhattan Welfare Center
Attn: Mr. Joseph Katz Office Manager

FROM: Lillian Nauer, Administrative Supervisor
Sidney Holtzman, Office Manager

Re: Blanche Hutcherson
Typist

Miss Hutcherson is to be commended for the spirit in which she accepted extraordinary work demands and cooperated in performing a variety of duties in the office manager's officed while temporarily assigned to Gramercy Welfare Center during the strike emergency.

She made an important contribution by helping workers in the office manager's section process a huge volume of emergency grants grants and by assiting in the preparation of many reports required by sections in central office. She did this in spite of a shortage of trained workers. For the first week of the strike, the office managers's secretary and one of her assistants were out; one assistant was also away for the entire month of January.

Miss Hutcerson's performance botin in quantity and in quality far exceeded normal expectations for an employee in her title and grade. We recommend that her work be ginven due consideration in the annual evaluation of her overall performance.

SH/w

Note: Recived
in the
LOWER MANHATTAN
CENTER FEB 9, 1965

"s/_____
Lillian Hauer

THE CITY OF NEW YORK
HUMAN RESOURCES
ADMINISTRATION
OFFICE OF EQUAL
EMPLOYMENT
OPPORTUNITY
250 CHURCH STREET,
NEW YORK, NY 10013

MEMORANDUM

DATE: April 6, 1989

TO: Whom It May Concern

FROM: Victoria B. Richart, Deputy Administrator
Office of Equal Employment Opportunity

SUBJECT: EXCUSED LEAVE
This will confirm that Blanche Hutcherson was seen at the HRA Office of Equal Employment Opportunity on April 6, 1989 from 12:45 P.M. to 1:25 P.M.

NOTE: FEDERAL LAW PROHIBITS RETALIATION BY SUPERVISOR OR EMPLOYER AGAINST AN EMPLOYEE WHO IN ASSERTING HIS OR HER CIVIL RIGHTS FILES A CHARGE OF DISCRIMINATION OR SEXUAL HARASSMENT WITH ANY HUMAN RIGHTS AGENCY.

Revised 12/15/88fm

PLF. DEPOSITION EXHIBIT
#22
3/26/97

May 5, 1988

TO: HRA Office of Equal Employment Opportunity
250 Church St. 8th Floor
New York, N.Y. 10013

FROM: Blanche Hutcherson
Waverly Center #13

SUBJECT: Harassment, and the Promotion of Ms. Vicky Pitchford to A.O.M. Undercare.

There has been harassment to me, and possible conspiracy in the Waverly Center to prevent my being promoted to A.O.M in Undercare. Ms. Faulkner ESIII, (13-3) wrote a memorandum dated 3/17/88. This memorandum was not brought to my attention util 4/15/88 by Ms. E. Quiones, Acting Directior in the absence of Mr. H. Geneen, Director.

Ms. Faulkner disagreed with me constantly on work related issues in the Unit. She became extremely upset with me when a PWP forge my name on a 661 (check document) in the amount of $500.

On 4/28 Mr. Genee, Director, informed me in his office that I was not picked for the A.O.M. in Undercare. "The picked what they thought was best for the center." Well, who was picked I asked. Mr. Geneen., Director, stated it would be announced the following day. However, within an half hour after I left Mr. Geneen's office Ms. Pitchford, and Ms. Redfear, PAAI, came to my Unit 13 to Ms. Faulkner's desk laughing. Ms. Pitchford stated "I got the trouble maker in my unit stated "My girl friend got the A.O.M's

job." We have to go out and celebrate.

Please note Ms. Faulkner lives one block form Ms. Pitchford in the Queen's section, and Ms. Pitchford was a contributor to some of my harassment.

ISSUE: Ms. Pitchford was not the best person qualified for the A.O.M.'s position in Undercare.

1. She lacks supervisory experience in under care caseload.

2. She has less than two years of supervisory experience in Income Maintenance.

3. Only limitedexperience in the Office Manager's office, and Control as a supervisor.

4. Lacks supervisory experience t supervise supervisors in Undercare Caseload with seven, eight, nine, ten, and fifteen years of experience. She will be a burden on the employees she supervises.

FACTS: I have twenty-five years with HRA, and as Supervisor seven years in Undercare Caseload.

1. I have received superior and outstanding evaluations as a supervisor.

2. I possession knowledge of procedures in Undercare caseload.

3. According to Personnel, promotionsa are to be made on the basis of merit and qualifications. I have the qualification.

Something is drestically wrong in howpromotionsare made in the Welfare Center (Waverly). There should be a better system for promotions to avoid cruelty and viciousness among employees ot get a friend promoted.

I heard through the grapevine that I was not promoted because I don't get along with people.

This is not true. Ms. Faulkner was set up to harass me in order for the Office Manager to have an excuse not to promte Me. Ms. E. Quiones, Office Manager, stated at the meeting on 4/15/88 that Ms. Faulkner had been in her ofice several times about me. Shen I asked her why wasnt this brought to my attention. Ms. Quiones and Ms. Faulkner were always talking when Ms. Quiones was on the fourth floor. Ms. uiones stated "I didn't think it was warranted. I wondered why Ms. Quiones had to talk to Ms. Faulkner so much. Ms. Faulkner's abusiveness continued because she had support from top administration.

Please note Ms. Watson, and Ms. Pitchford were the two supervisors who stood in front of me, stated "hee, hee, you didn't get promoted" in 2/87. Ms. Quiones and Mr. Pyatt feel these two employees are best for the center. Together both have at best seven years of supervisory experience, and have been prommoted to AOMs (Administrators over supervisors with five times more experience as they have.)

Ms. E. Quiones stte to me once "How long have you been here? Ms. Faulkner has to me "You have been here too long. " It appears that there is a group of employees in Waverly who have

taken it upon themselves to my every being promoted in Waverly.

NOTE: After Ms. Quionese promoted James Pyatt's girlfriend, Victoria Pitchford. James Pyatta handed her a promotion to director.

Ms. Faulkner had written a memorandum to me stating all the knowledge she knew about the work came from "Blanche Hutcherson." Blanche Hutcherson taught me form A toZ. James Pyatt tunred her agianst me from this day until December, 1992 he turned workers against me (Petitioner).

THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATON
OFFICE OF PERSONNEL SERVICES
271 CHURCH STREET
NEW YORK, N.Y. 10013

WILLIAM J. GRINKER
Administrator/Commissioner

ROGER GARCIA
Executive Deputy Administrator

WILLIAM CARVEVALE
Deputy Administrator

Date: August 2, 1989

Blanche Hutcherson
306 West 18th Street
Bronx, N.Y. 10452

Re: Notice of Case Conference
Disciplinary Charges
Under
Section 75 of the
Civil Service Law

Dear Ms. Hutcherson,

A Case Conference regarding disciplinary charges brought against you has been schedule on September 26, 1989 at 2:00 p.m.

at the Office of Administrative Trails and Hearings, 20 Vesey Street, New York, 10007, 6 Floor Hearing Rooms.

At this case conference, possible settlement of disciplinary charges brought against you will be discussed. It is important that you appear in order that this matter be resolved as quickly as possible. It is important that you appear in order this matter be resolved as quickly as possible. If you do not appear, the Agency will set this matter for trail and will proceed with or without your appearance.

You have the right to be represented by a lawyer or representative of a certified or recognized employee organization at the case conference. Your union may provide free legal assistance. You should give your lawyer or representative a copy of this letter immediately.

Very truly yours,

"s/ _____
William P. Carnevale
Deputy Administrator

NOTE: Petitioner' statement "These were absolutely outright fabricated lives by Victoria Pitchford (James Pyatt's girlfriend) and other administrative employees.

"s/ _____
Blanche Hutcherson

MEMORANDUM

TO: Mr. Geneen, Director
12 West 14 Street

FROM: Fredrike A Wilson
Employment Law Division
Office of Legal Affairs

SUBJECT: Blanche Hutcherson

Enclosed please find charges and specifications regarding the above named employee.

Please serve a copy of the charges and specifications immediately, in person, on back of the 300b form that is to be return to this office.

Additionally, have the server complete the Affidavit of Personal Service and sign before a Notary Public. Return same to this office.

Should have any questions, feel free to contract me at (212) 433-6685.

Returned signed forms to:

HUMAN RESOURCES ADMINISTRATION
Office of Legal Affairs
Employment Law Division
220 Church Street, 6th Floor
New York, New York 10013

HUMAN RESOURCES ADMINISTRATION _____x

In the Matter of Disciplinary Charges
and Specifications Relating to:

Name: Blanche Hutcherson
Title: P.A.A. I
Location: Waverly IMC #13
Address: 12 West 14 Street
New York, New York 10011

Respondent.

_____x

CHARGES AND
SPECIFCATIONS
NOTICE OF INFORMAL
CONFERENCE
NOTICE OF SECTION 75
HEARING
NOTICE OF STEP II
GRIEVANCE HEARING

Sir/Madam:

In accordance with Section 75 of the Civil Service Law, you are hearby/notified that the Charges and Specifications relatingt to Misconduct and/or Incompetence detailed in Exhibit are preferred against you.

You are allowed eight (8) days from receipt of this notice to serve upon the undersigned a WRITTEN ANSWER to the charges set forth in Exhibit "A". The filing of an answer is optional.

In order to resolve these charges, and INFORMAL CONFERENCE will be held before Beverly Anderson, an Informal Conference Holder, on the 7 day of March 19 89, at 10: 00 a.m./p.m. at 250 Church Street 9th Floor, at which Informal Conference you may appear and be represented by counsel of your own choice and/ or by a representative. You should immediately contact your union or attorney about this matter.

The Informal Conference Holder shall issue a written recommendation following the conference. The Informal Conference Holder may dismiss or sustain the charges, and recommend an appropriate penalty. The following penalties may be recommended; a reprimand: a fine, not to exceed thirty (30) days pay; a suspension, not to exceed two (2) months without pay; demotion to a lower civil service title and grade: or dismissal.

If the charges are sustained, you are allowed five (5) work days from receipt of the Informal Conference Holders's recommendation to choose wheter to accept the penalty, and proceed with a Section 75 hearing, or title covered by a union contract with the City of New York.

If you accept the Informal Conference Holder's recommendation, you will be required to sign a waiver of your right to the procedures the Civil Service Law.

If you do not accept the Informal Conference Holder's recommentation or elect the Grievance Procedure or responde withing the five (5) work day allotted period, then a HEARING will be held in accordance with Setion 75 of the Civil Service Law on the____ day of To Be. Determined_____ , at _____ a.m./p.m. at the OFFICE OF ADMINISTRATIVE TRAILS AND HEARINGS, 6th Floor, 20 Vesey Street, New York, NewYork 10007. You must appear at this hearing. You may be represented by an attorney or a representative of your choice. You may summon witnesses to testify on your behalf, present other proof and corss-examine witnesses who testify against you.

The administrative law judge may recommend dismissal of the charges, or if a finding guilt is made, the follwing penalties may be recommended: a reprimand: a fine not to exceed one hundred (100) dollars; a suspension without pay not to exceed two (2) months demotion to a lwer civil service title and grede; or dismissal from the service.

If you do not accept the informa Conference Holders's recomendation and elect to follow the Grievance Procedure within the five (5) work day allotted time period, you will waive the right to utilize the procedures available to you pursuant to Sections 75 and 76 of the Civil Service Law or any other administrative or judicial tribunal, except for the purpose of enforcing an arbitrators's award, and a STEP II GRIEVANCE HEARING will be held before a Hearing Officer designated by the Administrator/Commissioner of the Human Resources Administration, on the ___ day of __ , 19___, at __ a.m./p.m., at To Be Determined. At this Hearing you must appear. You may be

represented by cousel of your own choice, or by a union representative. Please bring to the Hearing all relevant documentation in support of your appeal.

All further notices or communications addressed to you in connection with these charges will be mailed to your latest home address on record with the Human Resources Administration, unless you request in writing that the same be sent to you at a different address.

Very truly yours,

Date served: _____
By: _____
Received: _____
_____
(Employee Signature

WILLIAM J. GRINKERS
ADMINISTRATOR/COMMISIONER
HUMAN RESOURCES
ADMINISTRATION
OF THE CITY OF NEW YORK

Served by Certified or Registered Receipt Requested and First Class Mail on: _____

By: William P. Carnevale
Deputy Administrator
Personnel/Services
271 Church St. -16th Fl.
New York, New York 10013
(212) 553-6194

"s/ _____
(signature not legible)

Form 300b (reverse)
Rev. 8/11/88

THE CITY OF NEW YORK

Subdivision 6.4.2. of the Rules and Regulations of the City Personnel Director requires that if an employee is a resident of the City, then a copy of the charges and specifications shall be served in person upon the employee. This means that personal service must be attempted at the employee's residence if s/he can not be served at his/hoer work location. The rule provides that when personal service has been attempted but can not be made, or if the employee is not a resident of the city, the charges and specifications shall be served by registered mail as well as by regular mail (first call) at the last known address of the employee.

AFFIDAVIT OF PERSONNEL SERVICE

STATE OF NEW YORK
SS: _____
COUNTY OF NEW YORK:

NEIDA (not legible, being duly sworn,
(Name of Server)
says:

1. That I am employed by the Human Resources Administration

2. That on 2/16/89 I personally served a true copy of Charges
(Date of Service)
and Specifications a copy which is annexed hereto on
Blanche Hutcherson, by delivering to and leaving same with
(Type of notice)
such person at HRA - Waverly-13 12 West 14th Street.
(Location of Service)
That at the time of such service I knew the person served to
"s/ _____
(Name of Employee)

Sworn to before me_____ this 16th day of Fe 1989

"s/. _____ "s/. _____
Peter Barry J. Camps
Notary Public or (Signature of Server)
Commissoioner of Deeds
City of New York No. 5-419
Expires May 1, 1990

EXHIBIT "A"

RE: Hutcherson, Blanche
P.A.AI
SS# 245-54-6589
Waverly IMC#13

CHARGE I
You engaged in miscondut and conduct unbecoming an employee of the Human Resources Administration.

Specification I
On or about the morning of July 7, 1988, at Waverly Income Maintenance Center #13, Manhattan, you exhibited hostile, objectionable, inappropriate and threatening behavior in that you entered the office of your supervisor, Victoria Pitchfore, screaming and swinging you fists at Ms. Pitchford.

Specification II
On or about the morning of July 7, 1988, at Waverly JMC #13, Manhattan, after you entered the office of your supervisor, as referred to in Specification I above, you continued to display your hostility and threatening conduct towards your supervisor in that you told her, "I'm going to kick your ass".

Specification III
On or about the morning of July 7, 1988, at Waverly IMC #13, Manhattan, as you your supervisor in that you told her. "Go fuck yourself."

February 21, 1989

Mr. Fredrika A. Wilson
Employment Law Division
Office of Legal Affairs

Ms. Blanche Hutcherson -BAAI SS# 245 54 6589
Waverly IMC #13

12 West 14 Street
New York, NewYork 10011

Charges and Specifications or preferred against me by Ms. Victoria Pitchford and Administrator of the Human Resources Administrator of the Human Resources Administration.

The fact tht I was assigned seven (7) Eligibility Specialsist on July 7, 1988 for the entire month. I had no knowledge that two workers in Group 4 had been assigned to me until the workers came to my cubicle with case records. Ms Watson, my immediate supervisor, failed to inform me that day.

The fact that I had Ms. Bowers (13-3) a problem worker and one uncovered the worker was out on disabiility it presented a big problem for me. Mr. Rodgriquez (13-5) was on vacation from 7/1/88 t 7/12/88 that left two uncovered caseloads. Ms Rider, ;Uit Clerk was assigned to Group 8, but covered Group 13 also started her vacation 7/11/88. Approximately two or more/weeks in July, 1988 I had two workers only in Group 13, and was supervising seven (7) caseloads. The month of July, 1988 I had a very absenteeism rate among subordinates because of the uncovered caseloads (13-4) and worker 13-5 was on vactation. I did not receive a person to help answer the telephone from Ms. Watson (my immediate supervisor).

I am the only Undercare Supervisor unable to see the workers I supervise. In July, 1988, I had to walk back and rorth twenty or more times trying to service clients myself over the telephone. while some of the administrators laughed.

The fact that I was receiving orders from three PAAIIs on July 7, 1998:

1. Ms. Ruth Green, PAAII gave me a memorandum dated 7/6/88, and stated in red "Rush2.
2. Ms. Pitchford, PAAII came to my cubicle. She didn't even look at me. I didn't see her face it was so fast. She threw some work on my desk from Group 4 (CRCU over due work) and stated in a harse voice with her back to me "This work must be done today". I couldn't move because of Ms. Pitchford's behavior. It was like knife went through my body. I couldn't accept this behavior from Ms. Pitchford. I left my cubicle and down the aisle to see Ms. Pitchford, but saw Ms. Ruby Jones, ESII, and Ms. Lindsay Watson talking. I stated to Ms. Pitchford "If you don't learn how to talk to people somebody will take your head off you shoulders.

Ms. Pitchford asked me to come to sher office. She stated to m in her office, "You have a problem." Because I have an impediment of Speech which I have been made fun of by Ms. Lindsay Watson, my immediate supervisor, administrators and employees in the Waverly Center I felt that she was attacking me personally. I stated to Ms. Pitchford "You have a problem too." Ms. Pitchford stated to me you are dreaming." I never ever used the phase "Go fuck yourself" to Ms. Pitchford. Ms. Pitchford must have been dreaming, and I resent Ms. Pitchford putting words in my mouth.

The fact that I never received support from Ms. E. Qiones, Office Manager I felt I had to do something to protect myself because the director was on vacation and these administrators were creating and impossible working condition for me to carry out the

mission of Agency (To service people in need of assistance).

On July 7, 1988 I should not have been subjected to this type of treatment from Ms. Victoria Pitchford who abused the power that was handed to her. On 7/19/88 Mr. Geneen, Director, called me into his office and office me into his office to discuss the altercation with Ms. Pitcher on 7/7/88.
After I left his office Ms. Pitchfor hit against me as she passed by me. I didn't want to continue the altercation with Ms. Pitchford, and didn't bring this matter to the director.

Because I had problems in the past with Ms. Ruby Jones, ESIII and nothing was done by Employee Discipline Division she continued to harass me through other workers, and remained a trouble maker.

Specification I
This statement is a defamation of my character, and I resent it. It is a fabricated lie by Ms. Victoria Pitchford to gain attention at the expense of others. It is an intentional lie by/her to hurt a business person who has worked very hard for the Human Resources Administration for over twenty six years.

Ms. Watson was assigned to me as my immediate supervisor, and Ms. Pitchford was never my immediate supervisor, however, the first day she was assigned to the Undercare Section in 5/88 she began telling one of my subordinates to tell me to give her some work. She began swinging her power fromday one at the pleasure of the other administrators.

On 7/7/88 it was Ms. Victroria Pitchfor Pithford who came out of

her office ot attack me while I was sitting in Ms. Watson's Office. I heard Ms. Ruby Jones, ESII (caseworker) state 'I am not going to let you do fit.
On 7/7/88 it was Ms. Victoria Pitchford who came out of her office ot attack me while I was sitting in Ms. Watson's Office. I heard Ms. Ruby Jones, ESII (caseworker) state 'I am not going to let you do it." "I am not going to let you do it." In fact an ESIII on 7/7/88 came to me and said "I heard you needed a body guard,". Ms. Watscon, Ms. Ruth Green, and Mamie Matthews, (all administrators) have turned this worker against me. In fact this person has made derogatory remarks to me, example "I will have to jack you up." Ms. Mamie Matthews laughed at this remark in a meeting on the 3rd floor in the conference room. I have had a very difficult time trying to supervise workers under Ms. Watson and her clicks.

Specifications II

On or about the morning of July 7, 1988 at Waverly IMC #13 Manhattan, as stated in Specification I Ms. Pitchford was never my immediate supervisor. This is another fabricated lie by Ms. Pitchford. I did not make such a statement "I'm going to kick your ass," in Ms. Pitchford office.

Specification III

As stated previously in Charge I I never stated to Ms.Victoria Pitchford "Go fuck yourself". I resent Ms. Pitchford "Go fuck yourself". I resent Ms. Pitchfor trying to put words in my mouth.

In coulsusion there are numerious employees in the Waverly

Center enaged in misconduct and conduct unbecoming an employee of the Human Resoureces Administration in the past two years, and nothing was done about it by the top administration.

Employees drink liquor in the lounges during working hours, and at their desk. Card playing in the lounge during working hours, employees gather in the A.O.M's office socializing, administrators conversing in the ailes with several employees laughing during working hours,and some workers have radios on their desk and ears, and some workers sleeping in the lounge during working hours. In fact, on one pay day around 6 p.m. I (petitioner) saw one supervisor so drunk that co-workers had to take him into the lounge to sober him up, but they were unsuccessful. I saw four-co-workers take him up off the floor out of the office.

Under Ms. Watson as A.O.M. it has been very difficult for me to have a meeting with my subordinates because of the noise Ms.Watson helps make herself. She has workers making noise when she sees me trying to have a meeting with my subordinates.

Employees you supervise are seen in the A.O.M.'s office more than they come to their immediate supervisor. Supervisor's subordinates become very difficult ot supervise.

Mr. William Santiago, Provisional Supervisor for two months came to my cubicle on 1/23/89 and stated "All persons over 50 years of age should retire, and stop hanging around."
Ms. Olga Rivere who works in the director's office was with him. Everybody knows I am 52 years of age because Mr. James Pyatt, Director in 1987,had my resume floating al over the office.

If James Pyatt, (Field Manager now) wants young people only in Waverly Center, I am willing to leave now, but I don't want another welfare center. I am requesting to transferred to another department to avoid humiliation and harassment by the administration at the Waverly Center.

On one occasion I (petitioner) saw Victoria Pitchford and James Pyatt in the elevator in the Waverly Center. When James Pyatt knew I was coing into the elevator he ran out the elevator like lighting, and left Victoria Pitchfor standing in the doorway.

A. Rodrigquez, ESIII cruelly abused me in 12/87 when he took 2 hours for lunch and I asked him where had he been. A. Rodriquez stated "None of your Fucking Business." James Pyatt was seen frequently in my Unit with him.

On 4/25/88 Juanita Faulkner, ESIII (subordinate) stated to me at my desk doing an altercation "I don't know wher you dropped from". and later stated "You are stupid". Nothing was doen about this incident either.

I have endured enormous abuse form subordianties because the top administrators were friends of supervisor's subordinates. It is nothing to hear subordinates using the word "F____k". The administrators' laughed. In fact, some ad ministratrors used subordintes to hurt supervisors. more cases on the supervisor's desk on a certain day when they wanted to get the/ supervisor, and yelled at the supervisor to upset daily. I have endure all of this.

"s/ _____

Blanche Hutcerson

MEMORANDUM

The City of New York
Human Resources Administration

DATE: 3/14/98
TO: Christine Mason - Manager
OPS/IM Team #5
Employee Discipline
271 Church Street, 5th floor

FROM: Vivian Flethcer - Disciplinary Specialist)

SUBJECT: HUTCHERSON, Blanche - PAAI - Waverly EEC #13, SS 245-54-6589
Address: 306 West 18th Street, Apt. 5D
New York, N.Y. 10011
Date Entered Service: 4/16/62

An Informal Disciplinary Conference was held on March 7, 1989 at approximately 10:00 A.M. in Room 926 at 250 Church Street, NYC. Ms. Blanch Hutcherson ws represneted by her Attorney, Gail Boyd, affiliated with Boyd, Staton, Cave, 26 Court Street, NYC. The nature of the conference and the respondent's rights under Vivil Service Law were explained.

CHARGE I SPECIFICATION I - Not Guilty

Ms. Boyd spoke on behalf of the respondent stating that on the morning of 7/7/88 the respondent was doing her job, supervising her workers, when Ms. Pitchford as Assistant to Office Manager of Undercare who is not the respondent's immediate supervisor,

came into her area and trhew work in front of the respondent. The respondent did not scream or become insubordinate, she ignored the event.

The respondent states that Ms. Pitchford is very cruel person, who is constantly abusing the power she holds.

The Attorney stated that the repsondent ahs been working for the department for 26 years and has always had a clean record until Ms. Pitchford started taking her hostility out on my client.

SPECIFICATION II & III - Not Guilty
The respondent denies the charges completely, stating nothing absolutely, Nothing as the charges read happened. All the accusations stem for the attitudes as written in Specification I.

The Attorney stated Ms. Pitchford should be made to show cause. She said the respondent never had a disciplinary in the 26 years she has been employed by the Agency. The repsondent has had good evaluations and the only way to solve this problem is to transfer Ms. Hutcherson to another location, where she can perform her job the best she knows she can do. The repsondent feels it is impossible to work under or around Ms. Pitchford and the charges are outright lies.

The Attorney stated this is not insubordination, it is a personaility conflict between the two parites involved.

RECORD REVIEW:

The record shows the documentation regarding the charges to be substantiated.

In checking the evaluations of respondent I found the following:

EVALUATION RECORD

For the Period	Overall Rating
9/1/87-8/31/88	Superior
9/1/86-2/20/87	Superior

FINDINGS RECOMMENDATIONS:

We find the respondent quilty of the charges as specificied in the documentation.

It is my observation that based on the memo from the respondent to the Law Department dated 2/21/89 she has a problem getting along with other workers. The respondent has been emplyed by the department for 26 years and feels overlooked for past promotional opportunities in the location. This is one reason ther seems to be a lot of animosity between the repsondent and the covering supervisor, which goes both ways.

However for the length of time the repsondent has worked for the department, she ahs a clean record with no prior disciplianreis. The respondent also has superior and no less than satisfactory evaluations on file.

The respondent should be remined to go through the chain of command to solve any problems she may feel are a hinderance to being promoted. She should also be remined of proper language to be used in a the office.

Therefore in view of theaforementioned we recommend a penalty of two (2) days' pay fine be imposed.

"s/ _____".
V. Fletcher

MEMORANDUM

THE CITY OF NEW YORK
HUMAN RESOURCES ADMINISTRATION
250 CHURCH STREET, NEW YORK, N.Y. 10013

Name and Address of Employee:

Date: March 28, 1989

Ms. Blanche Hutcherson
306 West 18th Street, Apt. 5D
New York, N.Y. 10011
SS#: 245-54-6589

Dear Ms. Hutcherson:

After considering all the evidence presented before me at the informal conference held on the 7th day of March, 1989, I find that the following charge(s) and specificiation (s) have been established:

Guilty of the charges as specificied

Therefore, I have recommended that the following penalty be imposed:

A fine of two (2) days' pay

If you excpet recommendation, you must within five (5) days of the date of this letter indicate your acceptance and you must sign a wavier of your right to the procedure availalbe to you under Sections 75 and 76 of the Civil Service Law. (Waiver, Form M-300h, is annexed hereto.) The waiver must be signed, witnessed, and delivered to the Location Head.

If you do not accept my decision, or do not respond within five (5) day period, then the Human Resources Administration shall proceed to hold a hearing, in accordance with Section 75 on the Civil Service Law at the time and place set forth on the charges already served upon you.

If you are in a title covered by a Union contract which affords the grievance alternative pursuant to the Vivil Service Law, then as an alternative, your union with your consent may choose to proceed in accordance with the Grievenace Procedure set forth in its contract with the City of New York. However, as a condition for submitting the matter to the Grievance Procedure, youand your union must file a written waiver of the right to utilize the procedure of the Civil Service Law (Waiver, Form M-300j, is annexed here to) or any other admininstrative judicial tribunal, except for the purpose of enforcing an arbitrator's award. If an election is made to proceed pursant to the Grievance Procedure, then such election must be filed with the Location Head within five (5) working days after receipt of this letter.

Very truly yours,

"s/ _____".
Vivian Fletcher.

THE CITY OF NEW YORK
HUMAN RESOURCES ADMINSTRATION
OFFICE OF PERSONNEL SERVICES
271 CHURCH STREET
NEW YORK, N.Y. 10013

WILLIAM J. GRINKER
Administrator/ Commissioner

Date: August 2, 1989

Blanche Hutcherson
306 West 18 Street
Bronx, N.Y. 10452

Re: Notice of Case Conference Under Section 75 of the Civil Service Law

Dear Ms. Hutcherson,

A Case Conference regarding disciplinary charges brought against you has been scheducled on September 26, 1989 at 2:00 pm at the Office of Administrative Trials and Hearings, 20 Vesey Street, New York, 10007 6 Floor Hearing Room

At this case conference, possible settlement of disciplinary charge charges brought against you will be discussed. It is important that you appear in order that this matter be resolved as quickly as possible. If you do not appear, the Agency will or without your appearance.

You have the right to be represented by a lawyer or representative of a certified or recognized employee organization at the case conference. Your union may provide free legal assistance. You should give your lawyer or represenative a copy this letter immediately.

Very truly yours,

"s/ _____".
William P. Carnevale
Deputy Administrator

THE CITY OF NEW YORK
HUMAN RESOURCE ADMINISTRATION
OFFICE OF PERSONNEL SERVICES
271 CHURCH STREET
NEW YORK, N.Y. 10013

WILLIAM J. GRINKER
Administrator/Commissioner

ROGER GARGIA
Administrator

WILLIAM CARNEVALE
Deputy Administrator

October 13, 1989

Ms. Blanche Hutcherson
306 West 18th Street, Apt. 5D
New York, N.Y. 10011

Dear Ms. Hutcherson:

As you know, a Section 75 proceeding was setteled and discontinued when a Stipulation of Settlement was entered into between you, your attorney and this Department of September 26, 1989. It was hereby agreed and you accepted a penalty of a one (1) day fine.

Accordingly, salary equivalent to one (1) days pay shall be deducted from one one (1) check.

You are expected at all time to conform to Departmental regulations and standards of conduct so that disciplinary action will not be necessary.

Very truly yours,

"s/ _____".
William P. Carnevale

NOTE: Petitioner's statement (Once James Pyatt and Victoria Pitchford got away with the outright fabricated lies in these charges. I (petitioner) was thrown to the employees to be abused the balance of time with New York City Human Resources Administration.

"s/ _____".
Blanche Hutcherson.

THE CITY OF NEW YORK
HUMAN RESOURES ADMINISTRATION
OFFICE OF EQUAL EMPLOYMENT
OPPORTUNITY

WILLIAM J. GRINKER
Adminstrator/Comissioner

CARMEN A. LUCIANO
Deputy Administrator

MEMORANDUM

DATE: Dec. 21, 1987

TO: Whom It May Concern

FROM: Carmen A. Luciano, Deputy Administrator
Office of Equal Employment Opportunity

SUBJECT: Excused Leave

This will confirm that BLANCHE HUTCHERSON was seen at the HRA Office of Equal Employment Opportunity on Dec. 21, 1987 from 10:30 AM to 11:00AM

NOTE: Federal Law prohibits retaliation by a supervisor or employer against an employee who is asserting his or her Civil RightsFiles a Charge of discrimination or Sexual harassment with any human rights agency.

PETITIONER'S MEMORANDUM

December 21, 1997

Gloria Demopoulos, Director of Personnel
Administration/IM Rm. 923
250 Church Street 10013

Blanche Hutcherson, PAAI
Group 13 (Waverly Center)

SEXUAL HARRASMENT IN THE WORKPLACE

I have receive unwelcome verbal offensive sexual behavior which has embarrassed, humiliated, and caused me to extreem stress at the Waverly center by subordinates and administrative staff.

It created an intimidating, hostile, and offensive working environment. And it has interferred with my work performance.

I feel this harassment was because of insecurity by the administrative staff. Here are the following incidents that occured to my in the Waverly Center, and dates:

On 12/3/87 I was cruelly abused with vulgar language by A.

Rodriquez, (subordinate of petitioner). When I asked him to answer the telephone before he went to lunch me he was going to lunch. He stated "None of your fucking business." "Why didn't you go to lunch?" I was extremely nervous and a mad. Mr. Rodriquez was sitting in the unit laughing. I got up enough nerve to go to the Director's Office and asked him for an appointment (Mr. James Pyatt). He stated to Mr. Pyatt when ever you have time.

Mr. E. Bonilla, ESII (12-5) informed that Mr. Pyatt said. I could come to his office. I went to his office and sat at his office. I went to his office and sat at his desk. I stated what Mr. A. Rodriquez had said to me. Mr. Pyatt stated a conference with the worker, anda conference with the A.Q.M. Supervisor, and worker should have been conducted. However, I felt a remark of this nature required prompt action. Because James Pyatt had been seen in my (Petitioner's) unit on numerous occasions talking to A. Rodriquez during working hours. I woking hours. I thought he should be informed of his best friend. James Pyatt explained the disciplinary procedure. I state to him that I had written up a worker and Personnel would laugh if he wrote a memorandum on this employee. Mr. Pyatt stated to me that all the workers in my unit signed a memo stating that if it weren't for Mr. Rodriquez they would be lost. (Petitioner never saw this memorandum). James Pyatt, stated that Mr. Rodriquez. Please see document 1 from a client complaining about Mr. Rodriquez. I (petitioner) received numerous compliants from clients statesA. Rodriquez stated to me from where you are because you won't bend.

James Pyatt, Director, called D. Nettles, A.O.M., A. Rodriquez into his office, and supervisor (petitioner). James Pyatt asked

supervisor to state why we were there. I stated that for the past two months A. Rodriquez had changed, and I didn't knowthe reason. Then I stated in the presence of James Pyatt and my immediate supervisor (D. Nettles) that A. Rodriquez made a vulgar statement "None of your fucking business. Why don't you go to lunch." When I asked him, was he returning from lunch at 1:45 p.m. Ms. D. Nettles asked A. Rodriquez if he made the statement. He said "no comment." Mr. Pyatt stated he "no comment." Mr. Pyatt stated case closed. However, when A. Rodriquez if he made the statement . He said "no comment." Mr. Pyatt stated he had the disciplinary procedure and if he had used it he (A. Rodriquez), would never forget it. A. Rodriquez stated he had the disciplianry procedure and if he usedit he (A. Rodriquez), would never forget it. A. Rodriquez stated he made the statement. Then smiling said I apologize to his supervisor. I said I accepted his apology. Mr Pyatt stated case clsoed. However, when A. Rodriquez returned to his desk he brought a big case to my (petitioner's) desk and dropped it into my basket, left smiling and went home. I feel the punishment did not fit the incident. I felt uncomfortable with A. Rodriquez in my unit knowing what he siad to me. In fact I took time off because it was to much to swallow immediately. Especially when A. Rodriquez tried to make a joke about a restaurant in front of my desk. A. Rodriquez stated workers were telling him I was out to get him. He state I wanted to be boss. He stated I told him Ruby Jones who I had a problem with prior to moviing ot group 13 could not talk to him.

The following examples are incidents of sexual abuse I've encountered at Waverly:

1. Week ending 12/18/87 I went to the ladies room on the fourth floor, and when I came out a co-worker, male, ESIII from another unit tried to push into the bathroom as I came out. I remained at the door and stated "stop beingt stupid" and closed the door, and he left.

2. 10/8/87 Bonilla ESIII (12-5) and Mr. Rodriquez ESII (13-5) passed a $20 bill while I was passing by A. Rodriquez's desk. Mr. E. Bonilla stated "This is all you are worth." We were working in the basement of the building.

3. June 29, 1987 P. Aldridge my (petitioner's) immediate supervisor used the word "Fuck" while talking to me about another worker. He apologized laughing.

4. June 17, 1987 Al Salerno, A.O.M. whistled behind me while I was walking in the basement for the copy machine. I cannot begin to explain the type of people tht have been promoted since E. Quiones, Prov. Office Manager, and October, 1986.

Because I have a slight speech defect from birth (cleft palate). I have been attached by employees, and my immediate A.O.M (P. Aldridge). However, this was done indirectly so I could hear the remarks. "Speak Clear" "No one in you unit understands you". It has not affected me as much as the sexual harassment because I feel these people are lacking in professionalsim, respect, and common sense.

Mr. Al Selerno who was made an A.O.M on 2/87 has been creating problems for centain employees so his friend Ms. Watson could be promoted to PAAII. On 11/27/87 I was assigned to cover

group ten (10). All the cases that were completed by the workers in that group were completed by the workers in that group were placed on the supervisor's desk after I went home. I had been to the desk three times and asked workers for cases to sign. When the supevisor (petitioner) returned the following Monday (the absent supervisor on 11/27/87) stated the I had not signed off any cases because two piles were on his desk. This situatio created a problem for two supervisors because of Al Salerno, A.O.M on 11/27/87. It was Linsday Watson who stood in front of me (petitioner) with 3 other adminitrative staff members (Adminisrtrators and a supervisor) stating "see you didn't get it" (The PAAII position I (petitioner applied for 2/87)

Top management has encouraged the behavior of the employees toward me, and to my disbelief tried to use employee to discredit my work performance, and ability to perform my task.

Management states employees are promoted who they can work with, aand get along with on the job. However E. Quiones, Prov. Office Manager came to Waverly 10/86, and Ms. Watson was selling raffles for a turkey. Ms. Quiones came in a half day won the turkey. Ms Watson has applied for the PAAII vacancy in Waverly. She been promoted and placed over me. Now can I respect someone who doesn't have common sense.

I feel that there is no place in Waverly Center for me because the administration has not been supportive. I am requesting a transfer immediately to a more conducive atmosphere for my health, and well being.

It will be greatly appreciated if I can be transfered immediately to

Amsterdam #24.

I prefer that this information to confidencetial to avoid more abuse from city co-workers.

If my request is not honored I have no alternative but to bring charges through EEO.

Please not I have been by passed four times for promotion to PAAII in the Waverly Center.

"s/ _____".
Blanche Hutcherson